Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 MAY 23, 1973 No. 21

This issue contains

T.D. 73–125 through 73–131
C.A.D. 1095 through 1097
C.D. 4418 and 4419
C.R.D. 73–10 through 73–11
Protest abstracts P73/460 through P73/480
Reap. abstracts R73/127 through R73/139
V.D. V73/4 and V73/5
Tariff Commission Notices

DEPARTMENT OF THE TREASURY
Bureau of Customs

NOTICE

The abstracts, rulings, and notices which are issued weekly by the Bureau of Customs are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs, Facilities Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 55 cents (single copy). Subscription price: $28.50 a year; $7.25 additional for foreign mailing.

Bureau of Customs

(T.D. 73-125)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 3, 1973.

The following consolidated aircraft bond has been approved as follows:

Name of principal and surety	Date of bond	Date of approval	Filed with area director of customs; amount
Polish Airlines "LOT", Inc., Warsaw, Poland; American Home Assurance Co.	April 15, 1973	April 12, 1973	J. F. Kennedy Airport; $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

(232.1)

LEONARD LEHMAN,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 73-126)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1973.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs

Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Atlantic Overseas Corp. (N.Y. Corp.), 5 World Trade Center, New York, N.Y.; Seaborad Surety Co.	Mar. 27, 1973	Apr. 2, 1973	New York Seaport; $10,000
BMT Commodity Corp. (N.Y. Corp.), 485 Madison Ave., New York, N.Y.; Federal Ins. Co. D 4/18/73	Jan. 6, 1972	Jan. 6, 1972	New York Seaport; $10,000
Cascade Shipping Co. (Oregon Corp.), Berth 220, P.O.B. 3404, Terminal Island, Calif.; St. Paul Fire & Marine Ins. Co. D 3/15/73	Mar. 21, 1972	Mar. 21, 1972	Los Angeles, Calif.; $10,000
Central Gulf Lines, Inc., International Trade Mart Bldg., New Orleans, La.; The Travelers Indemnity Co.	Mar. 8, 1973	Apr. 10, 1973	New Orleans, La.; $10,000
Cryogenics Management Corp. (N.J. Corp.), 247 Wescott Dr., Rahway, N.J.; Peerless Ins. Co.	Mar. 14, 1973	Mar. 15, 1973	New York Seaport; $10,000
Japan Line (New York) Services, Ltd., One World Trade Center, New York, N.Y.; Peerless Ins. Co.	Mar. 2, 1973	Mar. 5, 1973	New York Seaport; $10,000
Norman G. Jensen, Inc., 111 N. 11th St., Minneapolis, Minn.; St, Paul Fire & Marine Ins. Co. (PB 10/14/65) D 3/19/73 [1]	Mar. 14, 1973	Mar. 19, 1973	Seattle, Wash.; $10,000
Lafarge Concrete Ltd., 1050 Main St., Vancouver, B.C., Canada; St. Paul Fire & Marine Ins. Co. D 3/24/73	Mar. 24, 1972	May 3, 1972	Anchorage, Alaska; $10,000
Ralph A. Leavitt, Portland, Me.; Maine Bonding & Casualty Co. D 3/13/73	Dec. 31, 1970	Jan. 4, 1971	Portland, Me.; $10,000
Mobil Oil Corp. (N.Y. Corp.), 150 E. 42nd St., New York, N.Y.; Federal Ins. Co.	Feb. 22, 1972	Apr. 12, 1973	Charleston, S.C.; $10,000
Retla of Liberia, Inc. (Liberian Corp.), dba Retla Steamship Co., Pier F., Berth 203, Long Beach, Calif.; St. Paul Fire & Marine Ins. Co.	Mar. 30, 1973	Apr. 3, 1973	Los Angeles, Calif.; $10,000
Rothesay Paper Corp., Brunswick House, St. John, N.B., Canada; Maine Bonding & Casualty Co.	Oct. 10, 1972	Mar. 20, 1973	Portland, Me.; $10,000
Sea Containers, Inc. & its wholly-owned subsidiaries SC Pacific Ltd. & Sea Containers Ltd., One World Trade Center, New York, N.Y.; Insurance Co. of North America	Mar. 26, 1973	Apr. 4, 1973	San Francisco, Calif.; $10,000
South Atlantic Steamship Agency, Inc. (Fla. Corp.), P.O.B. 13085, Port Everglades, Fla.; The Home Indemnity Co.	Mar. 1, 1973	Apr. 12, 1973	Miami, Fla.; $10,000

Footnote at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Stauffer Chemical Co., Inc. (Del. Corp.), Exit 18, Sherwood Island, Westport, Conn.; Peerless Ins. Co.	Apr. 24, 1973	Apr. 24, 1973	New York Seaport; $10,000
Stresskin Products Co., A Div. of Tool Research & Engineering Corp. (Del. Corp.), 3030 Red Hill Ave., Santa Ana, Calif.; St. Paul Fire & Marine Ins. Co. D 3/3/73	Mar. 15, 1972	Apr. 6, 1972	Los Angeles, Calif.; $10,000

[1] Surety is United States Fidelity & Guaranty Co.

(542.113)

LEONARD LEHMAN,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 73-127)

Cotton textiles—Restriction on entry

Restriction on categories of cotton textiles and cotton textile products manufactured or produced in Mexico

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1973.

There are published below directives of April 19 and 25, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, regarding levels of restraint for cotton textiles and cotton textile products manufactured or produced in Mexico. The directive of April 19, 1973, amends certain levels of restraint for categories contained in that Committee's directive of April 28, 1972 (T.D. 72-138).

The directives of April 19 and 25, 1973, were published in the Federal Register on April 23, 1973 (38 F.R. 10036), and April 30, 1973 (38 F.R. 10666), respectively, by the Committee.

(343.3)

G. H. HEIDBREDER,
FOR R. N. MARRA,
Director,
Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 19, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On April 28, 1972, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning May 1, 1972 of cotton textiles and cotton textile products in certain specified categories produced or manufactured in Mexico, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraphs 5 and 8 of the bilateral Cotton Textile Agreement of June 29, 1971 between the Governments of the United States and Mexico, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the levels of restraint established in the aforesaid directive of April 28, 1972 for cotton textiles and cotton textile products in the following categories for the twelve-month period beginning May 1, 1972:

Category	*Amended Twelve-Month Levels of Restraint*[2]
1/2/3/4 (Group I)	12,315,816 pounds
5-27 and part 64 (knit fabrics) (Group II)	44,978,750 square yards
9/10	14,132,531 square yards
22/23	14,132,531 square yards
26/27 and part 64 (knit fabrics)	16,693,688 square yards (but not more than 7,779,375 square yards in Categories 26 and 27 shall be in duck fabric[3] and not more than 656,250 square yards equivalent shall be in knit fabrics, T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040)

[1] The term "adjustment" refers to those provisions of the bilateral cotton textile agreement of June 29, 1971, between the Governments of the United States and Mexico which provide, in part, that within the aggregate limit, the limits for Groups I and II may be exceeded by not more than 10 percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] These levels have not been adjusted to reflect entries made on or after May 1, 1972.

[3] Only T.S.U.S.A. Nos.:

320.—01 through 04,06,08	326.—01 through 04,06,08
321.—01 through 04,06,08	327.—01 through 04,06,08
322.—01 through 04,06,08	328.—01 through 04,06,08

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and
Deputy Assistant Secretary for Resources and Trade Assistance

---

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON., D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 25, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of June 29, 1971, between the Governments of the United States and Mexico, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective May 1, 1973 and for the twelve-month period extending through April 30, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico, in excess of the designated levels of restraint set forth below.

The combined level of restraint for Categories 1 through 4, shall be 11,756,005 pounds.

The overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics) shall be 45,919,125 square yards equivalent.

Within the overall level of restrain for Categories 5 through 27 and part of 64 (knit fabrics) the following specific levels of restraint shall apply:

Category	*Twelve-Month Level of Restraint*
9/10	13,519,406 sq. yds.
22/23	13,519,406 sq. yds.
26/27 and part of 64 (knit fabrics)	18,880,313 sq. yds. (but not more than 7,441,875 square yards in Categories 26 and 27 shall be in duck[1], and not more than 689,063 square yards equivalent shall be in knit fabrics, T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040)

Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics), each category without a specific level of restraint is subject to a consultation level of 670,049 square yards, pursuant to paragraph 7 of the bilateral agreement. If appropriate, future directions concerning these categories will be made to you by letter.

The overall level of restraint for Categories 28 through 63 and 64 (excluding knit fabrics) shall be 8,158,500 square yards equivalent. There was attached to the directive of April 28, 1969, from the Chairman of the President's Cabinet Textile Advisory Committee, concerning cotton textiles and cotton textile products from Mexico a table of the rates of conversion into square yard equivalents of Categories 28 through 64 which may be used in implementing this part of this directive.

Within the overall level of restraint for Categories 28 through 63 and 64 (excluding knit fabrics), the following specific level of restraint shall apply:

Category	*Twelve-Month Level of Restraint*
64 (excluding knit fabrics)[2]	671,088 pounds (of which not more than 431,412 pounds shall be in zipper tapes, T.S.U.S.A. No. 347.3340)

[1] Only T.S.U.S.A. Nos.:

320.—01 through 04,06,08
321.—01 through 04,06,08
322.—01 through 04,06,08
326.—01 through 04,06,08
327.—01 through 04,06,08
328.—01 through 04,06,08

[2] All of Category 64 except T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040.

Within the overall level of restraint for Categories 28 through 63, and 64 (excluding knit fabrics), each category without a specific level of restraint is subject to a consultation level of 469,033 square yards equivalent. If appropriate, future directions concerning these categories will be made to you by letter.

In carrying out this directive, cotton textiles and cotton textile products in Categories 1 through 64 produced or manufactured in Mexico and which have been exported to the United States prior to May 1, 1973, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period May 1, 1972, through April 30, 1973. In the event that any level of restraint for that period has been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of June 29, 1971, between the Government of the United States and Mexico which provide in part that within the aggregate limit, the group limits for Groups I and Group II may be exceeded by not more than 10 percent and the Group limit on Group III may be exceeded by not more than 5 percent; within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802), as amended on February 14, 1973 (38 F.R. 4436).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

499-999—73——2

(T.D. 73-128)

Wool and manmade fiber textiles—Restriction on entry

Restriction on entry of certain wool and manmade fiber textiles and textile products manufactured or produced in the Republic of China

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 7, 1973.

There is published below the directive of April 19, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of certain wool and manmade fiber textiles and textile products manufactured or produced in the Republic of China. This directive amends but does not cancel that Committee's directives of September 27, 1972 (T.D. 72-295), and September 29, 1972 (T.D. 72-303).

This directive was published in the Federal Register on April 24, 1973 (38 F.R. 10132), by the Committee.

(343.3)

G. H. HEIDBREDER,
FOR R. N. MARRA,
Director,
Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

April 19, 1973.

COMMISSIONER OF CUSTOMS
Department of Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you by the Chairman of the Committee for the Implementation of Textile Agreements on September 29, 1972 which designated levels of wool and man-made fiber textile products produced or manufactured in the Republic of China which may be entered for consumption or withdrawn from warehouse for consumption; and amends but does

not cancel the directive of September 27, 1972, which established an export visa requirement for the entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Republic of China.

Under paragraph 14 of the Wool and Man-Made Fiber Textile Agreement of December 30, 1971 between the Governments of the United States and the Republic of China, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, effective as soon as possible and until further notice the handicraft and art articles listed below, produced or manufactured in the Republic of China, and entered in accordance with the provisions of this directive, shall not be subject to nor counted in any level of restraint now or hereafter put into effect:

a. Pincushions;
b. Embroideries (needlework), of man-made fabrics with design embroidered with wool thread;
c. Handmade carpets, i.e., in which the pile was inserted or knotted by hand;
d. Christmas or Easter ornaments having a non-textile core or a non-textile structured frame and man-made fiber textile covering; and
e. Toy (novelty) animals, birds or insects with a plastic, wire or other non-textile core that are covered or decorated with textile thread or fiber."

To qualify for exemption from levels of restraint, each shipment of the above cited "Exempt Items," shall be accompanied by a certification issued by the Government of the Republic of China. The certification shall be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document or other commercial invoice when such form is used). Each certification will consist of the authorized signature of the official issuing the certification; identify the items exempted; indicate the date the certification was signed and certified; and carry the certificate number. A facsimile of the stamp, along with the signature of the official authorized to issue the exempt certification is enclosed.

All merchandise covered by an invoice which has an exempt certification but contains both Exempt and non-exempt textile items will be denied entry.

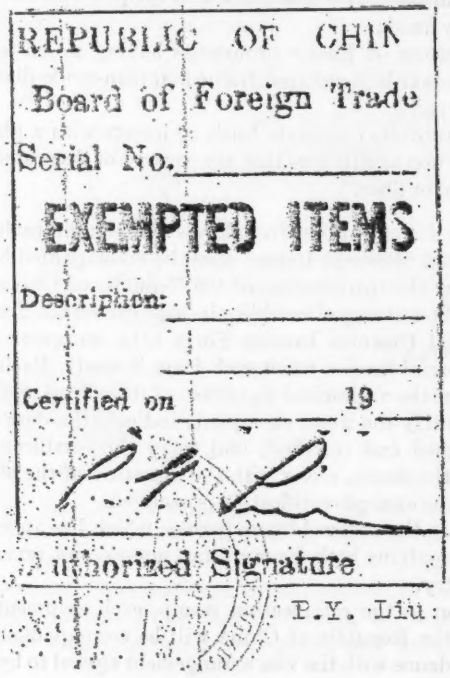
In addition to the certification stamp, each shipment of Exempt Items from the Republic of China will be accompanied by a signed visa in accordance with the visa arrangement agreed to by the Govern-

ments of the United States and the Republic of China on August 16, 1972.

The actions taken with respect to the administration of controls on imports of cotton textiles and cotton textile products, wool textile products, and man-made fiber textile products produced or manufactured abroad have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and
Deputy Assistant Secretary for Resources and Trade Assistance



(T.D. 73-129)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 30, 1973.

The Federal Reserve Bank of New York, pursuant to section 522 (c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

Hong Kong dollar:	*Official*	*Free*
March 26, 1973	$0.1970	$0.194269*
March 27, 1973	.1943	.193986*
March 28, 1973	.1943	.193986*
March 29, 1973	.1940	.194363*
March 30, 1973	.1946	.194552*

Iran rial:	
April 16, 1973	$0.0150
April 17, 1973	.0145
April 18, 1973	.0145
April 19, 1973	.0145
April 20, 1973	.0145

Philippine peso:
For the period April 16 through April 20, 1973 rate of $0.1460.

Singapore dollar:	
April 16, 1973	$0.4035
April 17, 1973	.4030
April 18, 1973	.4030
April 19, 1973	.4030
April 20, 1973	.4030

*Certified as nominal.

Thailand baht (tical):	
April 16, 1973	$0.0490
April 17, 1973	.0480
April 18, 1973	.0482
April 19, 1973	.0485
April 20, 1973	.0480

(342.211)

R. N. MARRA,
Director,
Appraisement and Collections Division.

(T.D. 73-130)

Duty free fuel for aircraft—Customs Regulations amended

Section 10.64a added to the Customs Regulations to provide procedures to control the withdrawal of bonded aircraft fuel

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—BUREAU OF CUSTOMS

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

On August 4, 1972, a notice of proposed rule making was published in the Federal Register (37 FR 15707), proposing to add section 10.64a to Part 10 of the Customs Regulations. This section provides for a new Customs Form 7309, Bonded Fuel Control Card, to be filed by the withdrawer of bonded fuel with the district director of Customs when bonded fuel is withdrawn from a Customs warehouse for use in international flights of aircraft. Customs sends a consolidated report to the withdrawer, who then files a documented reconciliation of all discrepancies thereon. This procedure will enable Customs to maintain a more accurate control over bonded fuel used by aircraft in international flights.

After consideration of all comments received the following changes are made in the proposed section 10.64a:

1. Paragraph (a) is changed as follows:

Withdrawers need not file a Bonded Fuel Control Card, Customs Form 7309, in connection with a reconciliation of the consolidated record for duty-paid withdrawals.

The withdrawer must file the Bonded Fuel Control Card, Customs Form 7309, within 15 days after date of withdrawal rather than daily or at such times as the district director may direct. Upon request by the withdrawer, for good cause shown, the district director may extend the time for filing up to 21 days.

A copy of the fuel sales ticket may be used in place of the Bonded Fuel Control Card, Customs Form 7309, if it contains all of the data and is in the same format as the said form and prior Customs approval has been granted.

2. Paragraph (b) is changed by inserting "30 or" before "60 days" in reference to requests to Customs to postpone the consolidated report.

[illegible]

[illegible] paragraph (f) [illegible] amended.

Section 10.24 and [illegible] amended to read as follows:

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Customs [illegible] Bonded Fuel Control Card [illegible]

[illegible] 30 days.

[illegible] amended to read as follows:

1. Paragraph (a) is amended to read:

Withdrawers need not file a Bonded Fuel Control Card, Customs Form 7509, in connection with a reconciliation of the consolidated record for direct withdrawals.

The withdrawer may file the Bonded Fuel Control Card, Customs Form 7509 within 15 days after date of withdrawal rather than daily or at such times as the district director may direct. Upon request by the withdrawer for good cause shown, the district director may extend the time for filing up to 21 days.

A copy of the fuel sales ticket may be used in place of the Bonded Fuel Control Card, Customs Form 7509, if it contains all of the items and is in the same format as the said form and prior Customs approval has been granted.

2. Paragraph (b) is changed by inserting "30 days" before "90 days" in reference to requests to Customs to postpone the consolidated report.

3. Paragraph (c) is changed to provide that if the port of departure is not a United States Customs port, the executed Flight Verification Card, Customs Form 7309–A, shall be delivered to the district director nearest the final United States port of departure.

4. Paragraph (f) is changed by extending the time allowed to sign and return the Certificate of Use and reconciliation of discrepancies from 30 days to 60 days. It further provides that Customs Form 7309 is not required with a duty-paid withdrawal filed in connection with the reconciliation. Oil import licenses will be charged when appropriate.

5. A new paragraph (g) is inserted stating the language to be used on the Certificate of Use.

6. Paragraphs (g) and (h) have been redesignated as (h) and (i) reflecting the insertion of new paragraph (g).

7. The extension period in redesignated paragraph (h) has been changed from a 30-day to a 60-day period to conform with the change in paragraph (f).

8. Several other minor editorial changes have been made.

Accordingly, section 10.64a is added to Part 10 of the Customs Regulations, Chapter I, title 19 of the Code of Federal Regulations, and is hereby adopted as set forth below.

Effective date. This amendment shall become effective on the first day of the first month following the 60th day after publication in the Federal Register.

(014.1)

VERNON D. ACREE,
Commissioner of Customs.

Approved May 8, 1973:

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[Published in the Federal Register May 15, 1973 (38 F.R. 12736)]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Part 10 of Chapter I, title 19, Code of Federal Regulations, is amended by adding section 10.64a to read as follows:

§ 10.64a Bonded fuel laden as aircraft supplies.—(a) In addition to other provisions of the regulations for the withdrawal of bonded fuel, for each fueling of an aircraft with fuel withdrawn from

499-999—73——3

a Customs bonded warehouse without payment of duty and internal revenue tax under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), or for each duty-paid and tax-paid withdrawal, except duty-paid withdrawals filed in connection with a reconciliation of the consolidated report (see paragraph (f) of this section), or for any other type of withdrawal of fuel including transfer of a quantity of bonded fuel covered by the same warehouse entry, the person making the withdrawal or his designated agent shall prepare, in duplicate, and sign a Bonded Fuel Control Card, Customs Form 7309. The withdrawer shall file with the district director the executed Bonded Fuel Control Card, Customs Form 7309, within 15 days after the date of the transaction. Upon request of the withdrawer, for good cause shown, the district director may extend the time for filing up to 21 days after the date of the respective transaction. A copy of the fuel sales ticket may be used in place of the Bonded Fuel Control Card, Customs Form 7309, providing it contains all of the data and is in the same format as Customs Form 7309 and prior Bureau of Customs approval has been obtained.

(b) If bonded fuel covered by a particular warehouse entry cannot be withdrawn within 90 days after the date of entry, a withdrawer may request one or more extensions of 30 or 60 days in order to postpone receipt of the consolidated report sent to him for response pursuant to paragraph (f) of this section. The withdrawer shall use a copy of Customs Form 7309 for this purpose, noting over his signature the region-district-port code number, the warehouse or rewarehouse entry number, and the extension requested. The withdrawer shall file the original completed form with the district director at the port of withdrawal.

(c) When imported fuel withdrawn under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), is laden on a qualified United States registered aircraft which departs directly for a foreign country or for a possession of the United States from a port where it is not otherwise required to clear Customs, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309–A, in duplicate, with the district director at the port of departure within 48 hours after departure. If the port of departure is not a United States Customs port, the executed Flight Verification Card, Customs Form 7309–A, shall be delivered to the district director at the Customs port nearest the final United States port of departure.

(d) In the case of an aircraft of United States registry arriving in the United States from a foreign country or from a possession of the

United States and fueling with bonded fuel for use on the remaining leg(s) of a qualified flight to a United States destination for which a permit to proceed is not required, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309–A, in duplicate, with the district director at the United States port of destination (termination) of the flight within 48 hours after the arrival of the aircraft at that port. If the port of destination is not a United States Customs port of entry, the executed Flight Verification Card, in duplicate, shall be filed within the 48 hours with the district director at the Customs port of entry nearest the United States port of destination.

(e) When imported fuel withdrawn under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), is laden on a United States registered aircraft which departs without clearing under a permit to proceed from Puerto Rico for the United States mainland, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309–A, in duplicate, with the district director at the United States port of destination (termination) of the flight within 48 hours after the arrival of the aircraft at that port. If the port of destination is not a United States Customs port of entry, the executed Flight Verification Card, in duplicate, shall be filed within the 48 hours with the district director at the Customs port of entry nearest the United States port of destination.

(f) Within 60 days after the date of mailing or personal delivery to a withdrawer of two copies of the consolidated report of all withdrawals under a given warehouse entry, the withdrawer shall sign the Certificate of Use on one copy of the report, return it to the district director together with a satisfactory documented reconciliation of all discrepancies, and file a duty-paid withdrawal for any of the fuel not properly accounted for. The other copy of the consolidated report shall be retained by the withdrawer. A Customs Form 7309 is not required with a duty-paid withdrawal, Customs Form 7505, filed in connection with the reconciliation. Oil import licenses shall be charged when appropriate.

(g) The Certificate of Use shall read as follows:

"I hereby certify that the fuel indicated above, with the exceptions as noted, (1) was laden for use as supplies for aircraft operated by the United States, or (2) was laden aboard an aircraft registered in the United States and, as reported to us by the respective airline, actually engaged in foreign trade or trade between the United States and any of its possessions, or (3) was laden for use as supplies for an aircraft registered in any foreign

country where trade by foreign aircraft is permitted, entitled to the reciprocal privileges as provided in section 309(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(d)), and, as reported to us by the respective airlines, actually engaged in foreign trade or trade between the United States and any of its possessions, or (4) was laden aboard foreign military aircraft in accordance with item 841.20 of the Tariff Schedules of the United States (19 U.S.C. 1202), on the basis of reciprocity."

(h) The district director, upon written application, may extend the 60-day period for the filing of the documents and any deposit of duties required under paragraph (f) of this section, if the district director is satisfied that the withdrawer has been or will be prevented by circumstances beyond his control from filing the documents and depositing the duties within the 60-day period.

(i) For purposes of this section, a United States registered aircraft chartered and operated by a foreign airline shall be deemed to be a foreign registered aircraft. The country of registry (flag) of the aircraft shown on the Bonded Fuel Control Card, Customs Form 7309, shall be the country code of the foreign airline.

(Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309)

(R.S. 251, as amended, sec. 309, 46 Stat. 690, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1309, 1624)

(T.D. 73-131)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 8, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

	Official	*Free*
Hong Kong dollar:		
April 2, 1973	$0.1940	$0.194552*
April 3, 1973	.1945	.194269*
April 4, 1973	.1945	.194316*
April 5, 1973	.1943	No rate
April 6, 1973	.1935	.194269*
April 9, 1973	.1935	.194316*
April 10, 1973	.1950	.194269*
April 11, 1973	.1950	.194269*
April 12, 1973	.1950	.194363*
April 13, 1973	.1960	.194316*
Iran rial:		
April 23, 1973		$0.0145
April 24, 1973		.0140
April 25, 1973		.0140
April 26, 1973		.0140
April 27, 1973		.0140
Philippine peso:		
For the period April 23 through April 27, 1973, rate of $0.1460.		
Singapore dollar:		
April 23, 1973		$0.4030
April 24, 1973		.4028
April 25, 1973		.4030
April 26, 1973		.4030
April 27, 1973		.4026
Thailand baht (tical):		
April 23, 1973		$0.0484
April 24, 1973		.0478
April 25, 1973		.0478
April 26, 1973		.0480
April 27, 1973		.0465

*Certified as nominal.

(342.211)

R. N. MARRA,
Director,
Appraisement and Collections Division.

499-999—73——4

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1095)

ALBERT E. PRICE, INC. *v.* THE UNITED STATES No. 5507 (—F.2d—)

1. CLASSIFICATION—WOODEN SPICE CABINETS

Appeal by importer from decision and judgment of Customs Court holding that spice cabinets with louver door hutch and with two drawers were properly classified under item 206.97 TSUS as household utensils of wood. Appellant claimed the merchandise should have been classified under item 727.35 TSUS as other wood furniture.

2. CONSTRUCTION—COMMON MEANING

A careful analysis of headnote 1, subpart A, part 4, schedule 7 is persuasive that the merchandise is not embraced by the statutory definition of furniture. The spice cabinets are not movable articles designed to be placed on the floor and it is farfetched to say that they are kitchen cabinets or cupboards.

3. ID.

It is pertinent that the importations in issue consist of two models, W–1151 being 15¼ x 11¼ x 2¾ inches and W–1152 being 15¼ x 16½ x 2¾ inches. It strains credulity to consider an article only 2¾ inches deep to be a kitchen cabinet or anything similar thereto.

United States Court of Customs and Patent Appeals, May 3, 1973

Appeal from United States Customs Court, C.D. 4334

[Affirmed.]

Allerton deC. Tompkins, attorney of record, for appellant.
Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Michael O'Rourke* for the United States.

[Oral argument March 26, 1973, by Mr. Tompkins and Mr. O'Rourke]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, *Associate Judges*, and ALMOND, *Senior Judge*.

ALMOND, *Senior Judge*.

[1] This is an appeal by the importer from the decision and judgment of the United States Customs Court, 68 Cust. Ct. 50, C.D. 4334 (1972), wherein certain spice cabinets were held to have been properly classified under item 206.97 of the Tariff Schedules of the United States (TSUS) as household utensils of wood and assessed with a duty of 16⅔ per centum ad valorem.

The involved merchandise consists of "Thoma-Wood Wall Spice Set wood cabinet with louver door hutch with two drawers at bottom."

Appellant in its protest alleged that the merchandise in issue should have been classified under item 727.35, TSUS, as other wood furniture dutiable at the rate of 10.5 per centum ad valorem.

In overruling appellant's claim, the trial court held that *Sprouse Reitz & Co.* v. *United States*, 67 Cust. Ct. 209, 332 F.Supp. 209, C.D. 4276 (1971), was *stare decisis* of the issues presented.

The statutes involved are:

Tariff Schedules of the United States

Classified:		
	Household utensils and parts thereof, all the foregoing not specially provided for, of wood:	
	* * * * * * *	
206.97	Other	16⅔% ad. val.
Claimed:		
	Furniture, and parts thereof, not specially provided for:	
	* * * * * * *	
	Of wood:	
	* * * * * * *	
	Other:	
727.35	Furniture other than chairs	10.5% ad val.

Headnote 1, schedule 7, part 4A:

1. For the purposes of this subpart, the term "furniture" includes moveable articles of utility, designed to be placed on the floor or ground, and used to equip dwellings, offices, restaurants, libraries, schools, churches, hospitals, or other establishments, aircraft, vessels, vehicles, or other means of transport, gardens, patios, parks, or similar outdoor places, even though such articles are designed to be screwed, or bolted, or otherwise fixed in place on the floor or ground; and kitchen cabinets and similar cupboards, seats and beds, and sectional bookcases and similar sectional furniture even though designed to be fixed to the wall or to stand one on the other; . . .

[2] A careful analysis of headnote 1, subpart A, part 4, schedule 7, TSUS, persuades us that the evidence of record fell short of establishing that the imported merchandise was embraced within the statutory definition of furniture. *The Tariff Classification Study*, schedule 7, page 242 states that "The concept of furniture embraced in this subpart is stated as a definition in Headnote 1." It is obvious that spice cabinets or racks such as we have in the instant importation are not "moveable articles of utility designed to be placed on the floor or ground * * *." Furthermore, we agree with the conclusion reached by the Customs Court in *Sprouse Reitz & Co.*, supra, that "it would be farfetched to say that they are kitchen cabinets or cupboards."

We find nothing to indicate that the articles in issue are known or even thought of as kitchen cabinets or that they were ever offered through any means to the public as furniture.

[3] We deem it pertinent to note that the importation in issue consist of two models, W–1151 being 15¼ x 11¼ by 2¾ inches and W–1152 two louvered doors above two drawers. We think it would strain credulity to consider an article only 2¾ inches deep to be a kitchen cabinet or anything similar thereto. The court below was correct in its conclusion that the small, decorative articles in issue were not similar in any way to kitchen cabinets.

We share the view so aptly expressed by the Customs Court that:

> * * * the headnote discussion of furniture was, on its face, intended to certify the inclusion of furniture which was permanently fastened to the premises, either on the floor or on the walls, as opposed to furniture which was moveable at will. In this respect, kitchen cabinets and similar cupboards were mentioned as examples of furniture which were capable of permanent placement. The mention of kitchen cabinets was *not* intended to expand the term "furniture" to articles of lesser substantiality than full size, genuine kitchen cabinets.

We agree with the Customs Court that "We are unable to conclude that the instant spice cabinets are more than household articles of a convenient and useful nature. It does not follow that they are furniture within the common meaning of that term."

We hold therefore that the imported merchandise was properly classified under item 206.97 of the Tariff Schedules of the United States as household utensils of wood.

The judgment of the Customs Court is *affirmed*.

BALDWIN, Judge, dissenting.

The term "furniture" as it is used in item 727.35 is defined by Head-

note 1, schedule 7, part 4A, to include "kitchen cabinets and *similar* cupboards * * *." The question before us is whether the merchandise at bar is included within that statutory definition. *Webster's Third New International Dictionary* (1961 ed.) gives the following definitions:

> *cabinet* * * * 1: a box for storing chiefly small articles usu[ally] closed by a hinged or sliding door, fitted with shelves or drawers, and suitably finished as an item of home, office, or laboratory furniture: *a*: an upright case or cupboardlike repository for utensils, materials, or documents conveniently accessible for use (a bathroom wall [cabinet] for medicines, bandages, and toilet articles) (cards alphabetically arranged in rows of file [cabinets]) (installation of a [cabinet] sink in the kitchen) * * *
>
> *cupboard* * * * 1a: a board or shelf for cups and dishes * * * 3: a closet with shelves to receive cups, dishes, or food; *also*: any small closet

The main reason the majority and the Customs Court considered the merchandise not to be kitchen cabinets was because of its size. Clearly there is no difference in function between the merchandise at bar and whatever larger cabinets the majority considers the term "kitchen cabinets" to be limited to. In my view, any difference in size is one of degree rather than a difference in kind. Nor is it important whether the merchandise was offered to the public as "kitchen cabinets" or as "furniture." We can safely assume that the merchandise was offered to the public as spice cabinets. The question is not what they are offered as but what they are, *i.e.*, do they fit within the statutory definition of "furniture."

Accepting, *arguendo*, the view that the cabinets at bar are not "kitchen cabinets," no reason is apparent why they are not "similar cupboards" within the meaning of the statutory definition. The entire function of the merchandise is to receive and store containers of food. Again the only possible basis for finding that the cabinets are not "similar cupboards" is the difference in size. Yet the size difference is not such as would prevent the cabinets from performing the function of cupboards. Moreover, the merchandise at bar is finished in the same manner that other wood furniture is finished, and it is just as suitable for *permanent* placement as any kitchen cabinet, bathroom cabinet, bookcase, or any other furniture designed to be fixed to the wall.

I would reverse the decision of the Customs Court.

(C.A.D. 1096)

THE UNITED STATES *v.* NOVELTY IMPORTS, INC. No. 5505 (— F. 2d —)

1. CIVIL ACTION—DECREE NISI

Order of the Customs Court denying a motion to vacate a decree nisi and order which had dismissed the civil action with respect to only two of several entries contained therein upon a motion of appellant to dismiss the entire civil action, affirmed.

2. CUSTOMS COURT—JURISDICTION

The Customs Court may entertain jurisdiction of a civil action combining a number of denied protests covering several entries when liquidated duties have not been paid as to some of the entries.

3. ID.

Consolidation of actions under 28 USC 1582(d) does not merge the causes of action so that all duties as to all entries must be paid as a condition precedent to the Customs Court's jurisdiction over the entire civil action.

United States Court of Customs and Patent Appeals, May 3, 1973

Appeal from United States Customs Court, C.R.D. 72–7

[Affirmed.]

Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *John A. Gussow* for the United States.

Serko & Sklaroff, attorneys of record, for appellee, *Murray Sklaroff*, of counsel. *John S. Rode*, of counsel, Amicus Curiae.

[Oral argument March 26, 1973, by Mr. Gussow, Mr. Sklaroff, and Mr. Rode as Amicus Curiae]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, *Associate Judges*, and ALMOND, *Senior Judge*.

RICH, *Judge*.

[1] This is an interlocutory appeal under 28 USC 1541(b), as amended, and Rule 13.2 of the Customs Court, from an order of the United States Customs Court in *Novelty Imports, Inc.* v. *United States*, 68 Cust. Ct. 362, C.R.D. 72–7, 341 F. Supp. 1228 (1972), denying appellant's motion to vacate a decree nisi and an order which had dismissed the civil action with respect to only two of the several entries contained therein upon a motion of appellant to dismiss the entire civil action.[1] We affirm.

[1] The Customs Court's denial, in the same order, of an alternative motion to quash the summons and dismiss the civil action pursuant to the decree nisi, is, according to appellant, not the subject of this appeal.

The Facts

The facts pertinent to this appeal are not in dispute. Several denied protests of appellee were included in a consolidated "single civil action" pursuant to 28 USC 1582(d).[2] With respect to two of the entries, No. 1110266 and 751722, liquidated duties had not been paid at the time of filing the summons, as required by 28 USC 1582(c).[3] Appellant moved to dismiss *the action* pursuant to this provision. In an order dated October 22, 1971, Judge Rao, characterizing appellant's motion as a "motion to dismiss the civil action as to entries 1110266 and 751722," dismissed it only with respect to the two entries as to which liquidated duties had not been paid. Appellant sought rehearing of this order requesting, inter alia, an interlocutory order permitting application to this court for review of the denial of appellant's motion to dismiss the entire civil action.

The Customs Court, per Judge Rao, denied appellant's motion to dismiss the entire civil action, but granted appellant's request and included a statement in the order permitting this interlocutory appeal.

Opinion

[2] Judge Rao, in the memorandum accompanying the order of the Customs Court, correctly framed and decided the issue as being, "whether under 28 U.S.C. 1582, as amended by the Customs Courts Act of 1970, this court may entertain jurisdiction of a civil action combining a number of denied protests covering several entries when liquidated duties have not been paid as to some of the entries." The memorandum reproduces and reviews in detail the language of the statute and its legislative history and reaches the conclusion that neither the language of the statute nor the legislative history indi-

[2] § 1582. Jurisdiction of the Customs Court

* * * * * * * *

(d) Only one civil action may be brought in the Customs Court to contest the denial of a single protest. However, any number of entries of merchandise involving common issues may be included in a single civil action. Actions may be consolidated by order of the court or by request of the parties, with approval of the court, if there are common issues.

[3] § 1582. Jurisdiction of the Customs Court.

* * * * * * * *

(c) *The Customs Court shall not have jurisdiction of an action unless* (1) either a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended, and denied in accordance with the provisions of section 515 of the Tariff Act of 1930, as amended, or if the action relates to a decision under section 516 of the Tariff Act of 1930, as amended, all remedies prescribed therein have been exhausted, *and* (2) except in the case of an action relating to a decision under section 516 of the Tariff Act of 1930, as amended, *all liquidatd duties, charges or exactions have been paid at the time the action is filed.* [Emphasis added.]

cates that Congress intended to change the prior law [4] such that "a joinder of a number of denied protests in a single summons would imperil the entire action if liquidated duties had not been paid as to any one entry." [3] The Customs Court thus held that "joinder under section 1582(d) does not merge the causes of action so that all duties as to all entries must be paid as a condition precedent to the court's jurisdiction over the entire civil action."

We fully agree with the reasoning and conclusion of Judge Rao's well reasoned memorandum, and adopt them as our own. The appellant's argument here is essentially the same [5] made before the Customs Court, and we find it to be fully answered. Apropos also, we think, is the reasoning of Judge Watson in denying a motion to dismiss a consolidated action under the same set of facts in *E. S. Novelty Co.* v. *United States*, 68 Cust. Ct. 374, C.R.D. 72–10 (1972), as well as the following observations which he made:

> This problem has been more troublesome than the length of this memorandum may indicate. After considerable reflection, I have decided that it is proper to dismiss only the portion of the civil action constituting the claim which contains the jurisdictional defect. I reach this conclusion primarily because I detect in this statute behind all procedures and forms, an underlying intent to allow the tariff treatment of each entry of merchandise or even each category of merchandise to give rise to a distinct legal claim. It happens that considerations of convenience and economy permit the combination of legal claims at various levels, such as the existence of numerous categories of merchandise (found in one entry) in one protest or the joining of numerous entries in one protest or the joining of numerous protests in one civil action. Nevertheless, the tariff treatment of the single entry or the single category of merchandise remains for me the most fundamental and indivisible circumstances which can give rise to legal claims. It is inconceivable that a separate and genuine legal claim can be destroyed by deficiencies in other claims with which it has become associated. It would be unjust if the mode in which an otherwise unimpaired claim reaches the court becomes a determinative factor. It would be intolerable if a statute whose funda-

[4] The Customs Court noted:

Under prior statutes it has been held that each invoice and entry is to be deemed and treated as a separate transaction for the appraisement of merchandise and the assessment of duties. *Sampson* v. *Peaslee*, 61 U.S. 571 (1858); *Omega Import Co.* v. *United States*, 52 Cust. Ct. 425, Reap. Dec. 10671 (1964), rehearing den. 52 Cust. Ct. 472, Reap. Dec. 10695 (1964). It has been the practice of this court, under former section 515 of the Tariff Act of 1930, to dismiss protests only with respect to those entries as to which duties had not been paid.

[5] "* * * that section 1582(c) is an explicit limitation of the jurisdiction of the court; that it created an absolute ground for dismissal of *an* action when *all* duties have not been paid at the time of filing the action, and that to allow severance of entries wherein duties had not been paid, while proceeding on the balance, would be a substantial departure from the explicit meaning of the statute.

mental purpose is to provide for administrative and judicial review was interpreted in a way which limited such review on artificial and technical grounds. So long as a valid protest has been filed, and the duties paid on a given entry or category of merchandise, the plaintiff is entitled to judicial review of the tariff treatment of that entry or category. [Footnote omitted.]

All we would add is the observation that—to borrow a phrase from Solicitor General Griswold—statutes should not be given a "wooden and even perverse construction."

The order of the Customs Court is *affirmed.*

(C.A.D. 1097)

THE UNITED STATES *v.* F. W. MYERS & CO., INC., No. 5481 (— F. 2d —)

1. CLASSIFICATION—CRAWLER—TYPE—TRACTORS—TSUS

Customs Court decision sustaining protests against the classification of crawler tractors under Item 692.35 TSUS and holding the tractors classifiable free of duty under Item 692.30 TSUS, affirmed.

2. SUFFICIENCY OF EVIDENCE—SUITABILITY FOR AGRICULTURAL USE

The words "suitable for use" as applied in the Customs law means "actually, practically, and commercially fit" for such use. Such suitability does not require that the merchandise be chiefly used for the stated purpose, but it does require more than "evidence of a casual, incidental, exceptional, or possible use."

3. ID.

Evidence fully supports the findings by the Customs Court that the basic construction of the tractors stipulated to be suitable for agricultural use and the tractors imported under protest appealed here is the same and the tractors are actually, practically, and commercially fit for agricultural purposes.

United States Court of Customs and Patent Appeals, May 3, 1973

Appeal from United States Customs Court, C.D. 4236

[Affirmed.]

Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Patrick D. Gill* for the United States.

Barnes, Richardson & Colburn, attorneys of record, for appellee. *James S. Kelly*, of counsel.

[Oral argument March 27, 1973, by Mr. Gill and Mr. O'Kelly]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, *Associate Judges*, and ALMOND, *Senior Judge*.

RICH, *Judge*.

[1] This appeal is from the decision of the United States Customs Court, Third Division, in *F. W. Myers & Co.* v. *United States*, 67 Cust. Ct. 75, C.D. 4256 (1971), sustaining appellee's protests against the classification of certain crawler tractors imported from Canada under TSUS 692.35 as "Tractors * * * Other," and holding the imported tractors classifiable free of duty under item 692.30 TSUS as "Tractors suitable for agricultural use * * *." We affirm.

The imported crawler tractors were of two types, the J–5 and the Muskeg M (the latter hereinafter referred to simply as the "Muskeg" tractors). The parties stipulated that the J–5 tractors are in fact "suitable for agricultural use" thus narrowing the issue to whether the Muskeg tractors are "suitable for agricultural use." The J–5 tractors are similar to the Muskeg tractors and are important here, however, because the parties have, by stipulation, incorporated an earlier case, *F. W. Myers & Co.* v. *United States*, 59 Cust. Ct. 445, C.D. 3182 (1967), in which it was held that both the J–5 and Muskeg tractors were "suitable for agricultural use" and thus free of duty within item 692.30. The Customs Bureau has thus accepted the decision in the prior case with respect to the J–5's, but now disagrees with respect to the Muskegs.

The lower court here found the incorporated case to have established that the basic construction of the J–5 and Muskeg tractors was the same, reviewed the record and decision in that case and the testimony of the witnesses presented by appellant in this case, and concluded that:

> The difference between the J–5 and Muskeg tractor is in degree and not in kind. Plaintiff has met the suitability for agricultural usage test. It, therefore, follows that the protests must be sustained.

The Customs Court noted that the "Explanatory Notes" to the Tariff Classification Study dated November 15, 1960, at pp. 325–26 show that item 692.30 changed the prior treatment of tractors chiefly used for agricultural purposes by providing for tractors "suitable for agricultural use."

The parties agree with the Customs Court's analysis of the history of item 692.30 as indicating that the item changed the prior concept

of "chief use" to one of "suitability for use," and both admit that "suitable for use" means "actually, practically, and commercially fit." *Keer, Maurer Co.* v. *United States*, 46 CCPA 110, C.A.D. 710 (1959). In *Keer, Maurer*, this court said (p. 114):

> [2] The words "suitable for use," as applied in the Customs law means "actually, practically, and commercially fit" for such use. *Kahlen* v. *United States*, 2 Ct. Cust. Appls. 206, T.D. 31947; *United States* v. *Lorsch & Co.*, 8 Ct. Cust. Appls. 109, T.D. 37222; *United States* v. *American & Patterson, et al.*, 9 Ct. Cust. Appls. 244, T.D. 38205; *United States* v. *Geo. S. Bush & Co., Inc., et al.*, 26 CCPA 145, C.A.D. 8; *Coro, Inc.* v. *United States*, 41 CCPA 215, C.A.D. 554. Such suitability does not require that the merchandise be chiefly used for the stated purpose, *United States* v. *Lorsch & Co., supra*, but it does require more than "* * * evidence of a casual, incidental, exceptional, or possible use. * * *" *Kahlen* v. *United States, supra.*

[3] We have reviewed the evidence of record including the testimony in the incorporated case and by the appellant's witnesses in this case and have concluded that the evidence fully supports the findings by the Customs Court below that the basic construction of the Muskeg and J–5 tractors is the same and the Muskeg tractors are actually, practically, and commercially fit for agricultural purposes, and such findings are not clearly contrary to the weight of the evidence. *United States* v. *F. W. Myers & Co.*, 45 CCPA 48, C.A.D. 617 (1958).

The Customs Court quoted the following statement from its opinion in the incorporated case:

> The unrefuted evidence that the involved tractors are used on farms for spreading manure and lime and other fertilizer, used in sugar bushes for gathering maple sap, used for plowing, used to pull hay balers, used for seeding, used to pull harvesters in harvesting corn, and used in disk harrowing is sufficient to show that said tractors are actually, practically, and commercially fit for agricultural purposes.

Appellant, in contending that the records failed to establish a substantial use of the Muskeg tractors in agriculture, asserts that the statement in the incorporated case relied upon by the Customs Court does not represent findings of the court in the incorporated case with respect to the Muskeg tractors, but represents that court's findings with respect to the J–5 tractors, which appellant maintains are substantially different from the Muskegs.[1]

---

[1] As appellant states it, "the additional power, tractive capability and flotation of the Muskeg, causing it to be a far more expensive vehicle, is what dedicates the Muskeg to the more rigorous non-agricultural use to which the records establish it is overwhelmingly put."

With respect to this question, whether the record in the incorporated case supports the findings of the Customs Court here that the Muskeg tractors, as opposed to the J–5's, are suitable for use on farms, we have reviewed the record and are satisfied that the evidence supports appellee's view that at least some of the witnesses in the incorporated case were testifying to the use of *both* types of tractors or the Muskegs alone in agricultural pursuits, and that there is ample support in the record for the finding of the court below that the Muskegs are actually, practically, and commercially fit for agricultural purposes.[2]

The judgment of the Customs Court is *affirmed.*

---

[2] Appellant has noted that there are involved in the present case "differing models of the Muskeg tractor itself," some of which models may not have been involved in the prior case, but it has not argued that any such model differences represent differences in the suitability of the Muskegs for agricultural pursuits. The importations here involve some "Carrier" models of the Muskegs which are basically the same as the regular Muskeg tractors except that the engine is located closer to the front of the frame. The incorporated case may have involved only the regular Muskeg tractors.

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4418)

M. HOHNER, INC. *v.* UNITED STATES

MEMORANDUM OPINION AND ORDER

Port of New York, Court No. 68/5977 and 16 others on musical instruments—melodicas

[Judgment for plaintiff.]

(Dated April 26, 1973)

Brooks & Brooks (*Richard Furman* of counsel) for the plaintiff.
Harlington Wood, Jr., Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

MALETZ, Judge: These 17 cases involve the dutiable status of wind musical instruments invoiced as "[m]elodicas" that were exported

from West Germany and entered at the port of New York. The imported articles were classified by the government as "[o]ther wind instruments" under item 725.26 or as "[o]ther musical instruments * * * [o]ther" under item 725.52 of the tariff schedules and assessed duty at the rate of 17 percent, 15 percent or 13.5 percent ad valorem, depending on the date of entry. Plaintiff claims that the imported merchandise is properly classifiable under item 725.18 as mouth organs and thus dutiable at the rate of 14 percent, 12.5 percent or 11 percent ad valorem, depending on the date of entry.

In a separate complaint, covering each of these cases, plaintiff alleges that it is the importer of record or consignee of the merchandise involved; that the protests were timely filed; that all the liquidated duties on the imported articles have been paid; that the imported articles consist of melodicas and are the same as the articles which were the subject of *M. Hohner, Inc.* v. *United States*, 63 Cust. Ct. 496, C.D. 3942 (1969);[1] that the imported articles are not properly dutiable under item 725.26 or 725.52 since they are more specifically described in item 725.18; and that the imported articles are properly classifiable under item 725.18 as mouth organs and should be assessed with duty at the rate of 14 percent, 12.5 percent or 11 percent ad valorem, depending on the data of entry.

In its answer to each of the complaints, defendant admits each allegation in the complaint, concedes that the imported articles are properly dutiable under item 725.18 as mouth organs and consents to the entry of judgment in each case sustaining the claim under item 725.18 at the rate of duty of 14 percent, 12.5 percent or 11 percent ad valorem, depending on the date of entry.

In the light of the foregoing considerations, it is hereby ordered that the claim in each of these actions be, and the same hereby is, sustained, and the importations are held dutiable under item 725.18 at the rate of 14 percent, 12.5 percent or 11 percent ad valorem, depending on the date of entry. The regional commissioner of customs at the port of New York will reliquidate the entries accordingly.

(C.D. 4419)

INTER-MARITIME FORWARDING CO., INC. *v.* UNITED STATES

Electrical tapes

Pressure-sensitive tape, composed of polyethylene film and rubber thermoplastic adhesive, imported in rolls, chiefly used for electrical

[1] In that case, the court held that a melodica—which is a wind instrument having multiple free-swinging, pre-tuned reeds and a single blow-hole, and whose notes are selected by movement of the fingers rather than the mouth—was properly classifiable as a mouth organ under item 725.18 rather than under item 725.26 covering other wind instruments.

insulating purposes, held properly classified under item 790.55, Tariff Schedules of the United States, as pressure-sensitive tape, rather than under item 773.30, as electric insulators of rubber or plastics.

ELECTRIC INSULATOR—TARIFF MEANING—PRESSURE-SENSITIVE TAPE—MATERIAL

An "electric insulator," as that term is used in tariff statutes and in the trade, is distinct from insulation or insulating materials. The former is a specific device or piece of equipment known in the trade as an insulator. The latter is material used for insulating purposes or from which an insulator may be made.

Pressure-sensitive tape is still material even though produced from other insulating materials. It is not a piece of equipment and must be cut for each particular use. It is not an electric insulator, as that term is used in the Tariff Schedules of the United States, but is material intended to be classed as pressure-sensitive tape.

Protest No. 66/20275 against the decision of the regional commissioner of customs at the port of New York

[Judgment for defendant.]

(Decided April 27, 1973)

Allerton deC. Tompkins for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

RAO, Judge: The merchandise involved in this case is described on the invoice as "Self Adhesive Tape" – "Black Polythene Electrical Ref. 1409." It consists of black tape with an adhesive coating on one side, measuring ¾ inch by 22 yards, imported in rolls. It was assessed with duty at 20 per centum ad valorem under item 790.55, Tariff Schedules of the United States, as pressure-sensitive tape and is claimed to be properly dutiable at 10 per centum ad valorem under item 773.30, as an electric insulator of rubber or plastics.

The pertinent provisions of the tariff schedules are as follows:

773.30	Electric insulators, of rubber or plastics----	10% ad val.
*	* * * * * * *	
790.55	Sheets, strips, tapes, stencils, monograms, and other flat shapes or forms, all the foregoing articles (except articles provided for in item 790.50) which are pressure sensitive, with or without protive liners, and whether or not in rolls----	20% ad val.

At the trial Fred Devan, executive vice-president of Devon Tape Corp., the importer herein, testified that the instant merchandise is made of polyethylene film and a pressure-sensitive black adhesive. The adhesive is a natural rubber thermoplastic adhesive system which contains inorganic fillers, tackifiers and plasticizers. The witness stated that both the plastic sheeting and the adhesive were electrical insulating materials and that the tape produced therefrom was ready for use in its imported condition as an electric insulator. It it used primarily to insulate copper wire at the point where two wires are being joined together or applied and to wrap around the handles of pliers which will be used on live electrical wires. The tape is particularly suitable for electrical insulation because of its high dielectric breakdown and high insulation resistance. It is also flexible, pliable, and highly conformable. It is resistant to moisture, chemicals, oils, aging, and dry-out, and is electrically pure, containing no sulphur or other corrosive ingredients.

Mr. Devan testified that the imported merchandise is pressure-sensitive tape and is sold as such. It is not described in his his company's literature nor sold as an electric insulator. When used, it becomes insulation for an electrical conductor. It can be removed but it would ordinarily not be reused. The length of tape used in an application varies from 1 to 3 feet or 1 to 2 yards. The tape could be used for other than electrical applications but in fact is very rarely so employed.

The witness stated that he was familiar with other electric insulators, naming polyester tubing, polyester sheets, certain electrical impregnated papers, and certain chemicals, such as varnishes, epoxy, resins, and dips.

His firm handles many pressure-sensitive tapes, including packing tapes, reinforced filament tapes, double-coated tapes, transparent tapes, protective tapes, red lithographers' tapes, marking tapes, and cotton tapes. The present merchandise falls within a sub-category, known as electrical insulating tapes. A brochure, dated October 15, 1970 (exhibit A) issued by his firm, contains a heading "Specialty Electrical and Vinyl Insulating Tapes." While it does not list thereunder the instant merchandise, which was imported in 1964 and has been discontinued, it does list another product with a different plastic backing used for the same basic purposes, electrical insulation.

Defendant's first witness was Kurt W. Kuenzle, area sales manager of the Minnesota Mining and Manufacturing Company, which manufactures, *inter alia*, pressure-sensitive tape. The witness produced samples thereof, received in evidence as exhibits B and C. He said that exhibit B is a Scotch 33+ brand vinyl plastic electrical tape, used for the same purposes as the imported merchandise. Exhibit C is a

black, ten-mill, vinyl tape called Scotchrap that is used as corrosion protective tape for underground gas lines and pipes, which may be exposed to chemical vapors. It has a different type of adhesive from exhibit B, but the two do not differ markedly. They are basically the same in their electrical insulating properties. Exhibit B is used in electrical applications but also to tie the ends of ropes and to patch swimming pools.

The witness testified that he had heard exhibit B described in the trade as electrical tape, electrical insulating tape, and insulation, but not as an electric insulator. He had sold products commonly known as insulators in the electrical trade and produced two samples, received in evidence as exhibit E, a porcelain termination kit, and exhibit F, a single conductor termination kit. Each kit contains a number of articles and materials. The witness called the accordion-like segment of exhibit E, which is made of porcelain, a cable terminator, termination, pot head, or insulator. Exhibit F is also called a cable terminator and is known in the trade as an electric insulator of plastic. Both Exhibits, as entireties, are sold as electric insulators, but each part is not itself an electric insulator.

Mr. Kuenzle would not identify exhibit B as an electric insulator of rubber or plastics, but as electrical insulation, a roll of plastic tape that has electrical insulation properties. He had never heard any such tape described as insulators of plastic.

According to the witness, exhibits E and F are designed for use with high-voltage electric current, whereas material like exhibit B is used with low-voltage current to prevent the escape or transmission of electricity through the tape. The latter would not be used as primary insulation with high-voltage current.

Defendant's second witness was Lee Stuart, Electrical Engineer General, Corps of Engineers, United States Army. He has a degree in electrical engineering, and has worked as an electrician and as an electrical designer. He testified that an electric insulator is a product made to insulate and support bare wires. It can be removed, relocated and reinstalled. It may be made from any insulating material. An insulator is equipment, a piece made for a specific purpose, bought and sold under the name of insulator. Tape, on the other hand, is material, and is bought and sold as tape. While in a broad sense, electrical tape acts as an insulator, it does not become an electric insulator in his opinion. It would be misleading to refer to it as such. He would not accept the imported merchandise as an electric insulator of plastic.

The witness considered the cable terminator, exhibit F, to be an electric insulator. Other articles which he regarded as insulators are depicted on pages 182 and 183 of Graybar Condensed Catalog No. 29

(exhibit H). He said they were known as insulators in the industry and that if he asked for insulators, they were what he would expect to get. He said that tapes and insulators are treated separately in the Corps of Engineers Guide Specifications which he uses.

The record shows and the parties are in agreement that the imported merchandise is plastic pressure-sensitive tape chiefly used for electrical insulation purposes. The question is whether such tape falls within the provision for electric insulators of rubber or plastics, and if so, whether it is more specifically provided for as such than as pressure-sensitive tape.

Merchandise the same as that involved herein was before the court in *Devon Tape Corp.* v. *United States*, 57 Cust. Ct. 507. C.D. 2856 (1966), which arose under the Tariff Act of 1930. That record has been incorporated herein and is summarized in the opinion of the court. The merchandise had been classified under paragraph 923 of the Tariff Act of 1930, as modified, by similitude to manufactures of cotton, not specially provided for. It was held similar to rubber tape used in the electrical trade for wrapping and insulating electrical wire splices and connections and therefore classifiable by similitude under paragraph 1537(b), as modified, as insulating materials composed wholly or in chief value of rubber.

The law applicable here is different, however, in that the Tariff Schedules of the United States contain a specific provision for pressure-sensitive tape, not found in the Tariff Act of 1930, and one for electric *insulators* of rubber or plastics, rather than one for molded *insulators and insulating materials* of rubber or gutta-percha.

Plaintiff claims that the provision for electric insulators, item 773.30, *supra*, is a use provision and covers tape chiefly used for electrical insulation purposes, whereas defendant claims that said item is an *eo nomine* provision and covers articles or devices rather than materials, citing *Naftone, Inc.* v. *United States*, 67 Cust. Ct. 341, C.D. 4294 (1971). In that case the merchandise consisted of rolls of plastic film, not over 15 inches wide, designed for and used as a dielectric in capacitors to separate the electrodes. The court held that the merchandise was an electrical insulating material and that the provision for electric insulators of rubber or plastics was applicable only to such articles or devices as were insulators, but not to the electrical insulating material from which they were made.

Plaintiff claims that the instant tape is more than a material; that it is made from insulating materials and is ready for use in its imported condition.

The issue turns on the meaning of the term "electric insulators," as used in the tariff schedules.

The term "insulator" has been defined by lexicographers and technical authorities, broadly, as a substance or material that is a non-conductor of electricity, heat or sound, which is used to inhibit or stop the passage of electric current, and, more narrowly, as a device, article or appliance used to separate electrical conductors and often to support them. *Websters' Third New International Dictionary* (1966 ed.); *Funk & Wagnalls New Standard Dictionary* (1952 ed.); *Reader's Digest Great Encyclopedic Dictionary* (1966 ed.); *Modern Dictionary of Electronics* (1972 ed.); *Chamber's Technical Dictionary* (1949 ed.); *The Encyclopedia Americana* (1953 ed.), vol. 15, p. 175b; *The Harper Encyclopedia of Science* (1963 ed.), Vol. 2, p. 610; *Encyclopedia Britannica* (1951 ed.), Vol. 12, p. 451.

Funk & Wagnalls New Standard Dictionary states, for example:

> insulator * * * (1) A substance that is a non-conductor of electricity, heat, or sound, as cotton, gutta-percha, silk, and rubber, the dielectrics most commonly used for covering wires conveying electric currents.
>
> * * * * * * *
>
> (2) A device made of an insulating substance, for preventing the passage of electricity, heat, or sound.
>
> For practical purposes insulators are made in a variety of different forms adapted to the particular purpose in view, as the *double-cup insulator*, a device for insulating electric wires, consisting of two funnel-shaped cups, placed one over the other and supported by a pin, thus providing a free air-space between; the *petticoat i.*, a form in which the base is outspread and enlarged; the *pigtail i.*, which has a piece of twisted wire molded in at the top; the *shackle i.*, an unusually strong form used for insulating overhead wires; the *slot i.*, made in the form of a ring, the electric wire passing through the center; the *strain i.*, one used between an electric wire and the wire which supports it; and the *umbrella i.*, one having an umbrella-like top to protect the base from the rain.

In the Tariff Information Survey of paragraph 167, Tariff Act of 1913, on "The Electrical Industry," the following appears on p. 61:

> *Insulators.* In addition to the articles mentioned above, which have both insulating and current carrying parts, there is a class of articles used only as insulating supports or protection for electric circuits. Most important in this class are line insulators, used for supporting wires and cables on pole lines, to prevent the escape of current. They may be of glass or porcelain; glass is often used for the lighter lines, especially for telegraph and telephone lines, on account of its cheapness, but porcelain is in general use for the heavier lines and for those of high pressure, on account of its better mechanical characteristics. Insulators are of several types; the pin type has a hole to receive a wooden or metal pin, which is cemented to the insulator, and bolted to the cross-arm;

> the suspension type for higher voltages is made in the form of specially shaped disks, suspended one from another, the cable being suspended from the lowest. Other forms of insulators are the small porcelain knobs and cleats and unglazed tubes used in interior wiring, and for carrying wires over buildings, and bushings; some, of large size, are used to protect the terminals of electrical apparatus, such as transformers and circuit breakers. While the construction of insulators appears simple, they have been made the subject of exhaustive research and mathematical calculation.

Tariff statutes have used both the term "insulators" and the term "insulating materials." The Tariff Acts of 1922 and 1930 provided for "molded insulators and insulating materials" of rubber or gutta-percha (paragraphs 1439 and 1537(b), respectively), and for "Electrical insulators and other articles" of shellac, copal or synthetic resin (paragraph 1441, Tariff Act of 1922) or of shellac or copal (paragraph 1539(a), Tariff Act of 1930).

In the Tariff Schedules of the United States, it is stated in headnote 1, schedule 6, part 5, that said part does not cover "electrical insulators or insulating materials (classifiable in other schedules according to materials of which made)." Item 535.11 of part 2 of schedule 5 provides for "Porcelain insulators, with metal parts cemented thereto and comprising not less than 30 percent of the weight thereof, used in high-voltage, low-frequency electrical systems" and the superior heading to items 547.41–547.43 covers "Glass electric insulators with or without fittings." These items obviously refer to devices or equipment and not materials.

Items 773.30–773.31 cover "Electric insulators, of rubber or plastics." These items were discussed in the Summaries of Trade and Tariff Information, 1968, schedule 7, volume 7, p. 133, wherein it is stated that electric insulators are made in many shapes and sizes and are used to support charged conductors and to prevent them from contact with one another or from grounding. While not controlling, this statement is in accord with the prior construction placed on the term "insulators" by the Tariff Commission and that evidenced by Congress in the language used in items 535.11 and 547.41–547.43, and may be given some weight. *Cf. American Bristle & Hair Drawing Co., Keer, Maurer & Co.* v. *United States*, 59 CCPA 104, C.A.D. 1048 (1972); *F. B. Vandegrift & Co., Inc.* v. *United States*, 65 Cust. Ct. 260, C.D. 4086 (1970), *aff'd sub nom., United States* v. *F. B. Vandegrift & Co., Inc.*, 59 CCPA 62, C.A.D. 1039, 468 F. 2d 1400 (1972); *Border Brokerage Company Inc.*, v. *United States*, 64 Cust. Ct. 331, C.D. 3999 (1970).

It appears, therefore, that the term "insulators" in tariff acts has been used in its narrower and more specific sense. That is the meaning given to the word by defendant's witnesses. They did not consider electrical tape used for insulating purposes to be an insulator, but confined that term to particular pieces of equipment made to insulate and support wires, bought and sold under the name of insulator, While plaintiff's witness considered the imported tape to be an insulator, he was using the term in its broader sense, including materials.

I conclude that an insulator in trade and commerce and in tariff acts is something distinct from insulation or insulating material. The former is a specific device or piece of equipment known in the trade as an insulator. The latter is material used for insulating purposes or from which an insulator may be made. The imported tape is still material, even though it has been produced from other insulating materials. It is not a piece of equipment, and, while chiefly used for insulation, it must be cut for each job, and, as imported, choices remain as to the particular use for which it may be selected. *Bailey-Mora Company, Inc., et al.* v. *United States*, 57 Cust. Ct. 99, 109, C.D. 2737 (1966); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938); *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936); *F. H. Paul & Stein Bros., Inc.* v. *United States*, 44 Cust Ct. 130, C.D. 2166 (1960), *appeal dismissed*, 47 CCPA 173 (1960).

That Congress intended pressure-sensitive electrical tape to be classified as pressure-sensitive tape is evidenced by the following from the Tariff Classification Study of November 15, 1960, which is a recognized source of Congressional meaning. *United States* v. *Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, C.A.D. 986, 426 F. 2d 1308 (1970); *Western Wire Works, Inc.* v. *United States*, 59 CCPA 5, C.A.D. 1025 (1971). It is stated in schedule 7, p. 472:

> Item 790.55 would provide for pressure-sensitive tapes and other pressure-sensitive articles (other than those provided for in item 790.50). The principal tapes that would be included in this provision are cellophane tape, *friction tape*, rubber tape ,and vinyl plastic tape. These tapes are not currently provided for as such and therefore are dutiable on the basis of component material of chief value. * * * [Emphasis supplied.]

Friction tape is defined as "cotton tape impregnated with water-resistant insulating material and an adhesive and used esp. to protect, insulate, and support electrical conductors—called also *electric tape*." *Webster's Third New International Dictionary.*

When item 790.55 was before the Tariff Commission for consideration, a written statement was presented by the Pressure Sensitive Tape Council, a trade association of domestic manufacturers, in which insulating tapes and electrical tapes were included among various kinds of pressure-sensitive tapes and it was urged that pressure-sensitive tape of all types be included in a single paragraph in a single schedule. Tariff Classification Study, schedule 7, pp. 765–768. No exceptions were included in the item as prepared by the Tariff Commission and as adopted by Congress. When the provision for electric insulators of rubber or plastics was added (Third Supplemental Report, Tariff Classification Study, May 7, 1963, p. 73), neither insulating materials nor electrical pressure-sensitive tapes were included.

For the reasons stated, I hold that the the electrical pressure-sensitive tapes involved herein are insulating material and not the type of product intended by Congress to be covered by the provision for electrical insulators, but were intended to be classified as pressure-sensitive tape and assessed with duty under item 790.55.

The action is dismissed. Judgment will be rendered accordingly.

Decisions of the United States Customs Court

Custom Rules Decisions

(C.R.D. 73–10)

W. T. GRANT CO. *v.* UNITED STATES

On Plaintiff's Motion for Summary Judgment

Port of New York, Court No. 64/9519, etc., on wearing apparel

[Motion denied.]

(Dated April 24, 1973)

Sharretts, Paley, Carter & Blauvelt (*Richard L. Furman* of counsel) for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

MALETZ, Judge: In these consolidated actions, plaintiff has moved for summary judgment pursuant to rule 8.2, contending that there is no genuine issue as to any material fact and that it is therefore entitled to judgment as a matter of law. Defendant opposes on the ground that a genuine factual issue remains for trial, specifically the identity of the merchandise in question.

The actions arise as follows: On various dates between March 3, 1961 and March 16, 1962, and between January 28, 1963 and April 15, 1963, the merchandise in question—which was of Japanese origin—was entered at the port of New York. The merchandise consisted of cotton shirts, cotton slacks, rayon slacks and cotton shorts which were invoiced as "little boy's wash and wear shirt and slack sets" (item S/0802), "little boys' cabana sets" (items 8–29462 and 8–29884), and "little boy's shirt and short set" (item 8–29678).

The cotton shirts were assessed at 25 percent ad valorem as shirts of cotton, not knit or crocheted, under paragraph 919 of the Tariff Act of 1930, as modified by T.D. 51802, and the cotton slacks and

shorts were assessed at 20 percent ad valorem as other clothing and articles of wearing apparel wholly or in chief value of cotton, not specially provided for, under that same paragraph, as modified. The rayon slacks were assessed at 27½ percent ad valorem plus 25 cents per pound under paragraph 1311 of the Tariff Act of 1930, as modified, as rayon articles.

Plaintiff claims that the cabana sets and the shirt and short sets are similar in all material respects to the cabana sets in *Miniature Fashions, Inc.* v. *United States*, 54 CCPA 11, C.A.D. 894 (1966), and that the shirt and slack sets are similar to the shirt and longie sets in *The Nissho American Corp.* v. *United States*, 64 Cust. Ct. 378, C.D. 4005 (1970), which sets, in each case, were held to be entireties dutiable at 20 percent ad valorem as clothing and wearing apparel, wholly or in chief value of cotton, not specially provided for, under paragraph 919, as modified. Plaintiff further claims that these two cases are *stare decisis* of the issue here, and that the sets in question are likewise entireties dutiable at 20 percent under the same provision of paragraph 919.

Defendant does not dispute the holdings in the cited cases but contends that a genuine issue of fact remains for trial, namely, whether the imported items are entireties and similar, as alleged, to the merchandise involved in *Miniature Fashions* and *Nissho American*.[1]

In the absence of samples of the imported articles or of documents and records relating to their purchase, importation, distribution, sale, advertising or promotion, plaintiff relies in support of its motion upon an affidavit, executed June 21, 1972, of D. Spencer, who from October 1962 through June 1965 was plaintiff-importer's buyer of "little boys' clothes," including little boys' shirt and slack sets, cabana sets, and shirt and short sets.

Spencer stated in his affidavit that he had examined all the entries which are the subject of the present actions and found as a result that he was familiar with all the items listed on plaintiff's schedule [S/0802, 8–29462, 8–29884 and 8–29678] since he had "personally purchased such merchandise on behalf of W. T. Grant." He added that the styles listed consisted—

> * * * exclusively of little boys' shirt and shorts or shirts and pants sets which were designed as sets and matched as to color, print, and fabric. They were imported as a unit, pinned together; invoiced as a unit, and invariably sold as a unit. They were inexpensive articles which had very little if any, value when separated.

[1] The affidavit of government counsel accompanying defendant's memorandum in opposition to plaintiff's motion indicates that neither the current import specialist at New York who passes upon this type of merchandise nor the import specialist who actually handled the imported items has any recollection of, or records pertaining to, the items.

> They did not even warrant the expense of removing the pins which attached the two pieces together, and if one of the parts were damaged, the entire set would be returned for credit or replacement.[2]

Spencer also stated that he was shown the exhibits of the cabana sets involved in *Miniature Fashions* and of the shirt and longie sets involved in *Nissho American*, and that he found them—

> * * * to be the same or similar as to material, style, color, pattern, function and assembly as sets, as the sets which I purchased for W. T. Grant, described in paragraph 4 above and set forth in the attached schedule.

After plaintiff filed its motion for summary judgment with the accompanying Spencer affidavit, defendant filed a cross-motion to take the oral deposition of Spencer; to have him produce at the deposition various documents and material; and for an extension of time until after the filing of the deposition within which to respond to plaintiff's motion. The cross-motion was granted by the court.

Spencer testified on his deposition that his duties as buyer included selecting and purchasing merchandise, meeting with the manufacturers and working with sales promotion. He ordered the type of merchandise involved here from October 1962 until June 1965 on the basis of "reference samples" submitted by the manufacturer. He saw samples of the shirt and slack sets for the first time in October 1962, and samples of other types of imported items at a later (unspecified) date. To his knowledge, no one inspected the merchandise after it was imported to see if it conformed to what was ordered.

The witness could not recall items S/0802, 8–29462, 8–29884 or 8–29678 when these numbers were read off to him. However, he remembered seeing retail displays of the shirt and slack set in the fall of 1964 at some W. T. Grant stores. The sets, which were stacked on a counter, were folded with a pin underneath the shirt. None of the merchandise, if damaged, was ever returned to Grant at the wholesale level since Grant had no facilities to accept damaged merchandise; instead, Grant advised its stores to dispose of such merchandise as they saw fit. The witness did not know how the stores actually disposed

[2] Spencer's description is strikingly similar to the trial court's summary of the testimony of plaintiff's witnesses in *Miniature Fashions, Inc.* v. *United States*, 52 Cust. Ct. 26, 27, C.D. 2429 (1964), which was cited by the appellate court (54 CCPA at 13), and reads as follows:

"* * * The items were designed as a unit, matched as to color, print, and fabric; imported as a unit, pinned together; invoiced as a unit; and invariably sold as a unit, both at wholesale and by retail establishments. They are inexpensive articles of children's apparel, which have very little, if any, value when separated. They do not even warrant the expense of removing the pins which attach the two pieces together, and should one of the parts be damaged, the entire set would ordinarily be returned for credit or replacement."

of that type of merchandise. However, the stores received a full allowance from Grant for damaged sets. To Spencer's knowledge, if the shirts, shorts, or slacks in the sets were damaged, the other article in the set was never sold separately.

During the period from October 1962 through June 1965, Spencer testified that plaintiff sold little boys' shirts, boxer shorts, dress shorts and slacks, but he could not remember their retail prices. He could not produce samples, records or other documents pertaining to the importations inasmuch as the importer "only keep[s] samples one year after the season is over" and, after a certain time, all records are destroyed.

The merchandise in issue, Spencer testified, was ordered as sets which were packed, shipped and displayed with the shirt pinned to the bottom. With respect to the shirt and slack set, the order was for "a printed flannel shirt with a corduroy slack, with a matching flannel lining which matched the shirt, with the bottom of the slack to be turned up so that the customer could see the bottom matched the top." The order also included size and labeling specifications, and a buttonhole tag describing the item as a little boy's shirt and slack set.

As for the cabana sets and shirt and short sets, Spencer stated that—

> The only difference [from the shirt and slack set] would be that the shorts were solid color; the top, the shirt, was a print. And we picked up the solid color which was in the shirt on the collar or on the pocket trim or on the sleeve trim, matching the same color combination.

The witness testified that he has dealt with 30,000 item numbers in his 19 years as a buyer of different types of articles for the importer. Upon examining the invoice descriptions of the present merchandise, he recalled that the items were "[l]ittle boys' shirt-and-short sets, little boys' shirt-and-pant sets" and "shirt-and-slack" sets. He "normally" did not refer to this merchandise by their item numbers which were used only for ordering and distribution purposes. He could not recall the colors, patterns or designs of the articles which, to his knowledge, were all cotton.

Defendant contends, against this background, that the deposition establishes that a factual issue remains for trial and that plaintiff's motion for summary judgment should therefore be denied. The court agrees and concludes for the reasons that follow that on the basis of the present record plaintiff has failed to establish the nature and identity of the imported merchandise.

In the first place, Spencer testified that he was familiar with and had personally purchased "such merchandise"; however, the items listed on all but five of the entries in issue were ordered and entered at least six months before he had assumed his duties as buyer of little boys' wear

and had even seen samples of the merchandise. Thus, Spencer failed to explain how or when he might have seen the merchandise which was imported between March 3, 1961 and March 16, 1962. Indeed, although claiming knowledge as to how the items were packed, shipped and, after importation, displayed in the stores, the witness conceded that the merchandise was not inspected after importation, and that he did not see any of the imported articles on display in the stores until the fall of 1964—well over a year after entry of the last shipment of the merchandise in question—when he saw a shirt and slack set.

In this latter connection, Spencer failed to explain how he knew that the set he saw on display in 1964 was one of the items involved here in view of the fact that he did not "normally" refer to the articles by their item numbers (except for ordering and distribution purposes), and he was unable to identify the numbers listed on the commercial invoices herein until he was shown the invoice descriptions for them.

The foregoing deficiencies noted in Spencer's affidavit and oral testimony would alone be sufficient to raise doubts as to his competency to testify respecting the imported articles. But of even greater concern are the major discrepancies between his description of the items in issue and the descriptions set out on the very entries and commercial invoices upon which he relied to "refresh" his recollection.

Specifically, (1) the witness stated that all of the merchandise was cotton, whereas entry 702512, covered by protest 64/17507, shows that some of the slacks listed under item S/0802 were made of rayon and acetate and were classified as rayon articles under paragraph 1311; (2) the witness stated that one of the invoices for "[o]ne little boys' set, or one order, consisted of *three* different style shirts, with matching solid color shorts, pinned together." [Emphasis added.] However, none of the invoices or entries so describe any of the items in issue. In fact, some invoices for cabana sets, e.g., in entries 920877, 987988 and 976831, the subject of protests 64/9519, 67/15467 and 66/6522, describe the item as consisting of boxer shorts and a choice of *four* differently styled shirts which are designated "A", "B", "C" and "D"; (3) although alleging familiarity with all of the items involved here and their similarity to the two-piece sets involved in *Miniature Fashions* and *Nissho American*, Spencer failed (as did government counsel) to observe that item 8–29678, the "little boys' shirt and shorts set" listed on entries 954557 and 938370 in protest 64/9519, and on entry 930018 in protest 64/15611, is described on all the invoices as a *three-piece* set consisting of a shirt, "boxer short" and "dressy short", and that the quantities shown on the entry papers indicate that twice as many shorts as shirts were imported in those shipments. Moreover, it is clear from Spencer's testimony that he thought all of the items in

issue consisted of *two-piece units* such as the merchandise in *Miniature Fashions* and *Nissho American*.

The foregoing inaccuracies—which to a major extent were not brought to the court's attention by counsel for the parties—becloud the witness' entire testimony. Undoubtedly, Spencer honestly tried to recollect data and other matter with which he had not been concerned for the past seven years; and it is quite possible that he did order some styles of little boys' clothes which were the same as or similar in all material respects to those involved in *Minature Fashions* and in *Nissho American*—but whether such styles comprise any of the merchandise in this case has not been established.[3]

The motion for summary judgment is denied.

(C.R.D. 73–11)

MOBILITE, INC. *v.* UNITED STATES

OPINION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR DISMISSAL

Court No. 72–3–00707

[Plaintiff's motion for summary judgment denied; interlocutory adjudication made in plaintiff's favor on classification issue. Defendant's cross-motions for dismissal, or alternatively for summary judgment, denied.]

(Dated April 27, 1973)

Donohue and Shaw **(*Charles P. Deem* of counsel) for the plaintiff.**
Harlington Wood, Jr.**, Assistant Attorney General (*Jordan J. Fiske*, trial attorney), for the defendant.**

NEWMAN, Judge: These cross-motions present two questions of novel impression concerning provisions of the Customs Courts Act of 1970 (P.L. 91–271), in addition to matters of substantive law.

This action—which is before the court on cross-motions for summary judgment [1] and defendant's cross-motion for dismissal [2]—involves the dutiable status of certain filament and luminescent light bulbs packed together with lamps and imported from Japan. The bulbs and lamps were assessed with duty as entireties at the rate of 19

[3] Although so obvious as not to require comment, the three-piece unit described as item 8–29678 patently is not similar in all material respects to the two-piece cabana set involved in *Miniature Fashions*. Whether or not the principle enunciated in that case is applicable here is a separate issue, which, however, is not before us.

[1] Rule 8.2.

[2] Rule 4.7(b).

per centum ad valorem under the provision in item 653.39 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68–9, for "other" illuminating articles.

Plaintiff claims that the lamps and bulbs should have been liquidated separately – the lamps at the rate of 19 per centum ad valorem under item 653.39, TSUS (the rate assessed); and the bulbs under the *eo nomine* provisions therefor at the rates of 5.5 per centum or 6 per centum ad valorem in items 686.90 and 687.30, TSUS, as modified, respectively. As is apparent, the dispute relates essentially to the proper rate of duty applicable to the bulbs rather than to the lamps.

STATUTES INVOLVED

Classified:

Schedule 6, Part 3, Subpart F:

Item	Articles	Rates of Duty
	Illuminating articles and parts thereof, of base metal:	
* * * * * * *		
653.39	Other	19% ad val.

Claimed:

Schedule 6, Part 3, Subpart F:

653.39 *supra*, and —

Schedule 6, Part 5:

	Electric filament lamps and * * * electric luminescent lamps * * *: Filament lamps:	
* * * * * * *		
686.90	Designed for operating at 100 volts or more	5.5% ad val.
and —		
687.30	Electric luminescent lamps	6% ad val.

JURISDICTION

Defendant's cross-motion to dismiss raises a threshold jurisdictional question. In its protest filed with the regional commissioner at the port of New York pursuant to 19 U.S.C. § 1514 (1970), plaintiff challenged the assessment of duty under item 653.39, TSUS, and claimed that the merchandise was properly dutiable under item 686.80 or item 688.40, TSUS. Thus, at the administrative level no claim was made that the bulbs were separately dutiable from the lamps. Such

claim was advanced by plaintiff for the first time in its complaint filed in this action.

In support of its motion, the Government contends that as neither the protest nor summons challenged the *appraisement* of the lamps and bulbs as entireties, plaintiff now is precluded from contesting their *classification* as entireties because a favorable ruling on the latter issue would, of necessity, disturb the appraisement. Defendant relies on *Wilshire Industries, Inc.* v. *United States*, 64 Cust. Ct. 84, C.D. 3963 (1970), and 19 U.S.C. § 1514 (1970).

In *Wilshire Industries*, this court held that it could not grant the plaintiff any effective relief pursuant to its entireties claim, made for the first time at the trial, where to do so in effect would have enlarged the scope of the protest to include *merchandise* not originally covered.

Here, defendant argues that if plaintiff prevails, in effect the court will be permitting an enlargement of the scope of the protest to include an *additional administrative action* (viz. appraisement) as the subject thereof, which action was not contested in the original protest; and that under section 1514 plaintiff was required to protest the administrative value determinations and state the claimed separate values as a prerequisite to an adjudication of the entireties issue in a civil action.

In the present case, the regional commissioner classified and appraised the lamps and bulbs as entireties, and plaintiff's new claim applies to those same items. Consequently, *Wilshire Industries* is not apposite to the issue presented here, viz: whether the court may consider plaintiff's new claim that the bulbs are separately dutiable from the lamps where plaintiff did not challenge the administrative decisions to classify and appraise the merchandise as entireties. This issue raises a question of first impression and involves the construction of 19 U.S.C. § 1514(a) (1970)[3] and 28 U.S.C. § 2632(d)(2) (1970)[4]

[3] 19 U.S.C. § 1514(a) provides:

"(a) Finality of decisions; return of papers.—Except as provided in section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 1520(c) of this title, shall be final and conclusive upon all persons (including the United States and any officer thereof) unless

Cf. *A. N. Deringer, Inc.* v. *United States*, 70 Cust. Ct. —, C.R.D. 73–4 (1973). See *infra*.

The purpose and effect of section 2632(d) are explained in the House and Senate Reports on the bill (S. 2624) which became the Customs Courts Act of 1970, P.L. 91–271:[5]

> Section 2632(d) retains the present authority of the court to provide by rule for consideration of any new ground in support of an action before the court if: (1) it applies to the same merchandise that was the subject of the protest; and (2) it is related to the same "administrative decision" contested in the protest.
>
> The term "administrative decision" in section 2632(d)(2) refers to those "decisions" listed in section 514 of the Tariff Act," [sic] section 207 of the bill, *infra*. Section 514(a), as amended, lists seven categories in which the decision may fall. A similar reference is made to "administrative decision" in section 1582(a) relating to the jurisdiction of the Customs Court, section 110 of the bill, *supra*. The requirement that the new ground raised in the Customs Court be related to the same administrative decision contested in the protest merely means that the new ground must fall within the same category as the decision contested in the protest.
>
> This requirement in section 2632(d)(2) is in accord with prevailing decisions of the Customs Court. [citations omitted]
>
> * * * * * * *
>
> Section 2632(d) does not change these principles. It retains them in the statute by requiring that any amendment be related to the same administrative decision contested in the protest. For example, if the administrative protest is limited to an attack on "the classification and rate and amount of duties chargeable," (Section 514(a)(2)), plaintiff would not be able to amend its papers in the Customs Court so as to contest in that Court "the appraised value of the merchandise" (Section 514(a)(1)), an administrative decision which had not been contested in the protest. That reflects the rule under existing law.

---

a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of Title 28 within the time prescribed by section 2631 of that title. When a judgment or order of the United States Customs Court has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly."

[4] 28 U.S.C. § 2632(d) reads:

"(d) The Customs Court, by rule, may consider any new ground in support of a civil action if the new ground (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision or decisions listed in section 514 of the Tariff Act of 1930, as amended, that were contested in the protest."

[5] H.R. Rep. No. 91–1067, 91st Cong., 2d Sess. 18–19 (1970); S. Rep. No. 91–576, 91st Cong., 1st Sess. 18–19 (1969).

It is plain from section 2632(d)(2), and the above-quoted statement from the House and Senate Reports, Congress intended that a plaintiff may not protest solely an administrative decision concerning classification (section 1514(a)(2)) and then file a civil action in this court challenging solely the administrative decision concerning value (section 1514(a)(1)). However, the problem here arises from the fact that plaintiff's new claims *concurrently* contest the appraisement as well as the classification of the regional commissioner. As Judge Rao recently noted in *A. N. Deringer, Inc.* v. *United States*, 70 Cust. Ct. —, C.R.D. 73-4 (1973):

> * * * Inherent within an entireties question is that of dutiable value, since where merchandise is appraised as an entirety, only one value is found, whereas if the merchandise is classifiable separately there must be a separate value for each component. The issue is somewhat of a hybrid, a fact which caused the difficulties and circumlocutions under previous statutes. *United States* v. *John Wanamaker*, 20 CCPA 381, T.D. 46185 (1933); *United States* v. *Malhame & Co., et al.*, 39 CCPA 108, C.A.D. 472 (1951); 28 U.S.C. 2636(d), prior to amendment, and cases cited above. Such circuitry is to be avoided under the new statute.

On the merits, the threshold question is one of classification: whether the bulbs are entireties with the lamps under item 653.39, TSUS. If the lamps and bulbs are found to be classifiable as entireties, then of course no value issue will be presented. If on the other hand, it is found that the bulbs are not classifiable with the lamps as entireties, then it will become necessary to determine separate values for the lamps and bulbs. While the value aspect of the entireties question obviously cannot be ignored, nevertheless such aspect is coincidental with or ancillary to the classification aspect. Thus, to dismiss this case for lack of jurisdiction, as urged by defendant, would in effect, permit the "tail (value aspect) to wag the dog (classification aspect)". Plainly, Congress did not intend such narrow construction or strict application of section 2632(d)(2). For these reasons, I conclude that plaintiff's new claim is "related" to the same administrative decision contested in the protest within the meaning of section 2632(d)(2); and consequently, the court has jurisdiction to adjudicate plaintiff's new claim.

In support of its motion to dismiss, defendant also points out that plaintiff did not challenge the appraised values in the *summons*. As previously mentioned, plaintiff's new claim was made for the first time in its complaint.

I see nothing improper in asserting a new ground for a civil action initially in the complaint. Neither section 26.32(d) nor any rule of the court requires that such new ground be asserted in the summons. In

point of fact, the form of summons prescribed by rule 3.4 of the court does not even provide a specific space for stating a new ground as a predicate of the civil action.[6]

Defendant's motion to dismiss is denied.

CLASSIFICATION

As indicated *supra*, the threshold issue on the merits is whether the bulbs are classifiable as entireties with the lamps.

Plaintiff's motion for summary judgment is supported by a statement of material facts, respecting which plaintiff contends there is no genuine issue. None of the facts set forth in plaintiff's statement are controverted by defendant. Thus, they are deemed admitted, pursuant to rule 8.2(b).

From plaintiff's undisputed statement of facts, it appears: the bulbs and lamps were packed together when shipped but were unassembled; the bulbs imported with lamp items 101, 116, 122 and 126, if separately considered, are electric luminescent lamps; the bulbs imported with lamp items 311 and 313, if separately considered, are electric filament lamps designed for operating at 100 volts or more; the luminescent and filament lamps are standard bulbs, such as are manufactured and merchandised separately in the United States; the bulbs are not specially designed for or dedicated to use with the lamp items enumerated above; lamps (including lampstands) and bulbs of the type involved here are bought and sold as separate articles, and each have separate commercial values.

Based upon the undisputed facts, and several decisions cited in its brief involving the issue of entireties, plaintiff urges that the imported lamps and bulbs were improperly classified as entireties under item 653.39, TSUS, and moves for summary judgment sustaining its claims under items 686.90 and 687.30, TSUS.

Defendant contends: in the event the court finds it has jurisdiction in this matter, defendant is entitled to summary judgment since the bulbs were correctly classified as a single entity with "their" lamps. Continuing, the Government argues: "It would be preposterous to classify separately that part of the [illuminating] article which actually illuminates, namely, the bulb, and say the lamp—no more than a power source – is an illuminating article, whereas the bulb, that which actually illuminates, is not".

---

[6] Indeed, the court has no rule specifically implementing 28 U.S.C. § 2632(d). And since no pleadings have been amended, rule 4.8 is inapplicable. However, under rule 1.1(b) "[w]here, in any proceeding or in any instance, there is no applicable rule of procedure, the judge or judges, before whom the action is pending, may prescribe the same".

Hence, defendant's position is that both the "power source" (lamp) and "illuminating factor" (bulb) comprise an illuminating article and thus are a single entity when imported together.

I am clear that the bulbs are not classifiable with the lamps as entireties. The facts that the bulbs were standard filament and luminescent bulbs, not specially designed for or dedicated to use with the imported lamps; that they were the same types of bulbs which were bought and sold in the United States as separate articles having separate commercial values; and that Congress provided *eo nomine* for such filament and luminescent bulbs in the tariff schedules, are persuasive that such bulbs, although packed together and shipped with the lamps, retain their separate tariff identities as filament and luminescent bulbs, and are properly classifiable under the *eo nomine* provisions claimed by plaintiff. Cf. *Torch Mfg. Co., Inc.* v. *United States*, 57 Cust. Ct. 521, C.D. 2863 (1966), and cases cited therein; and *Craig Panorama, Inc.* v. *United States*, 59 Cust. Ct. 97, C.D. 3085 (1967).

Significantly, when Congress intended to make light bulbs dutiable in combination with other articles, it employed appropriate language to express that intent. Thus, under item 688.10, TSUS, Christmas tree lighting sets are dutiable "with or without their bulbs", such bulbs having been otherwise provided for *eo nomine* under item 686.30, TSUS.

Accordingly, defendant's motion for summary judgment is denied.

VALUE

As we have seen, the lamps and bulbs were appraised in liquidation as entireties. Inasmuch as the bulbs have been determined here to be properly classifiable as separate tariff entities, it now becomes necessary, as ancillary to the separate classifications of the lamps and bulbs, to determine their separate dutiable values to which the ad valorem rates can be applied.

However, plaintiff requests that if the court determines that the bulbs were improperly classified as entireties with the lamps, the court enter a judgment dismissing this action as premature and referring the matter to the appropriate customs officials to make valid appraisements "in accord with the judicially determined separate tariff status of the import". Cited by plaintiff as a precedent for the foregoing "referral" procedure is *Astra Trading Corp. et al.* v. *United States*, 69 Cust. Ct.—, P72/317 (1972), an abstracted protect decision.

In *Astra*, radios and batteries were, pursuant to a stipulation of the parties, held to be separate entities rather than entireties; and, in accordance with the stipulation, the protest was dismissed as premature and the regional commissioner directed to take appropriate action not inconsistent with the order of the court.

Plaintiff's request to refer this matter to the customs officials to make separate appraisements of the lamps and bulbs raises a novel question of procedure in "entireties cases" under the new Customs Courts Act. *Astra*, it should be noted, was submitted on a stipulation, and no question whatever was raised concerning the proper procedure for determining the separate values of the radios and batteries. *Astra*, *then*, cannot be regarded as having any precedential value in this case.

One of the most significant changes made in the existing procedure by enactment of the pioneering Public Law 91–271 was abolishing the remand of protests by a division of three judges to a single judge for determining value,[7] and giving jurisdiction to single judges to hear *all* issues arising out of any entry or liquidation.[8] Thus, in the new law Congress intended that "[t]here will be a single judicial proceeding in which all issues, including both appraisement and classification, will be considered". H.R. Rep. No. 91–1067, 91st Cong., 2d Sess. 11 (1970); S. Rep. No. 91–576, 91st Cong., 1st Sess. 12 (1969). See also *A. N. Deringer, Inc.* v. *United States*, *supra*. Granting plaintiff's request to enter a final judgment referring this matter to the customs officials, with the issue of separate values judicially unresolved, would squarely defeat Congress' manifest intent. Hence, the determination of the separate values for the lamps and bulbs remains to be judicially resolved in this case; and of course, the burden of proof respecting such issue rests upon plaintiff.

Plaintiff has not set forth in its complaint the separate values claimed for the lamps and bulbs; and consequently issue has not yet been joined on this aspect of the case. At this juncture, therefore, I am unable to determine whether or not a factual issue exists to be tried concerning value. Accordingly, plaintiff's motion for summary judgment must be denied, with leave granted plaintiff to file an amended complaint setting forth the separate values claimed for the lamps and bulbs within thirty (30) days after entry of this order. Defendant is granted thirty (30) days after service of an amended complaint in which to file an amended answer.

---

[7] 28 U.S.C. § 2636(d) (1964).
[8] 28 U.S.C. § 254 (1970).

INTERLOCUTORY ADJUDICATION ON CLASSIFICATION ISSUE

Predicated upon the undisputed statement of facts herein, I have concluded that the bulbs were erroneously classified with the lamps as entireties, and to narrow the issues, make the following partial interlocutory summary adjudication: the lamps (or lampstands) are separately dutiable as illuminating articles pursuant to item 653.39, TSUS, at the rate of 19 per centum ad valorem; the bulbs imported with items 101, 116, 122 and 126 are separately dutiable as electric luminescent lamps under item 687.30, TSUS, at the rate of 6 per centum ad valorem; and the bulbs imported with items 311 and 313 are separately dutiable as electric filament lamps designed for operating at 100 volts or more under item 686.90, TSUS at the rate of 5.5 per centum ad valorem.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 30, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/460.	Ford, J. April 23, 1973	Associated Importers	64/14371, etc.	Par. 353 15% (items marked "A") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 12½% (items marked "A" and "C")	Motorola, Inc., et al. v. U.S. (Abs. 69019); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	Portland, Oreg. Subminiature earphones (items marked "A") Cases imported with radios (entireties) (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/461	Ford, J. April 23, 1973	J. C. Penney Purchasing Corp. et al.	66/44917, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	San Francisco Earphones (entireties with radios)
P73/462	Richardson, J. April 23, 1973	Asiatic Petroleum Corp.	70/15839	Item 712.49 11.5%	Item 800.00 Free of duty	Agreed statement of facts	New York American goods returned (Parts of Beechcraft—transmitter and indicator)
P73/463	Landis, J. April 23, 1973	Enrique Garza	64/24270, etc.	Item 184.75 10%	Item 480.45 Free of duty	Enrique Garza v. U.S. (C.D. 4192)	Laredo Ground phosphate or ground phosphate rock
P73/464	Landis, J. April 23, 1973	F. B. Vandegrift & Co., Inc.	65/9900, etc.	Item 750.15 0.8¢ each plus 16%; 14.4% plus 0.7¢ per lb.; 12.8% plus 0.6¢ per lb. (items marked "A" and "B")	Item 651.49 10%, 9% or 8% (items marked "A") Item 651.47 17%, 15% or 13.5% (items marked "B")	U.S. v. F. B. Vandegrift & Co., Inc. (C.A.D. 1039)	Philadelphia Straightening combs, wholly or in c.v. of brass (items marked "A"); wholly or in c.v. of iron or steel (items marked "B")
P73/465	Watson, J. April 23, 1973	S. Berger Import & Mfg. Corp.	67/67846	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.

P73/466	Watson, J. April 23, 1973	Montcalm Products Corp.	70/2591, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New Orleans Artificial flowers, etc.
P73/467	Watson, J. April 23, 1973	Pharmacia Fine Chemicals, Inc.	66/13669, etc.	Par. 11 3.4¢ per lb. plus 25½%	Par. 1558 10%	Pharmacia Laboratories, Inc. v. U.S. (C.D. 4190)	New York A complex chemical substance
P73/468	Newman, J. April 23, 1973	Paul Munk Co., Inc., et al.	67/53861, etc.	Item 657.20 19% (items marked "A") Item 657.35 1.275¢ per lb. plus 15% (items marked "B")	Item 653.95 17% (items marked "A") Item 654.00 10% (items marked "B")	The Westbrass Company v. U.S. (C.D. 4293) (items marked "A" and "B")	New York Showerstallstrainers, showerheads, stainless steel duo strainers, rain heads, and steel rain heads (items marked "A") Showerheads (items marked "B")
P73/469	Re, J. April 23, 1973	Amthor Imports et al.	65/13244, etc.	Item 222.42 34%	Item 222.60 25%	Royal Cathay Trading Co. et al. v. U.S. (C.D. 2622)	San Francisco Hanging planters, sleighs, serving trays, etc., of rattancore
P73/470	Re, J. April 23, 1973	Franklin Variety, Ltd., et al.	66/7335, etc.	Item 772.06 21¢ per lb. plus 17%; 18.9¢ per lb. plus 15%	Item 772.15 17% or 15%	Davar Products, Inc. v. U.S. (C.D. 3880)	Honolulu Plastic snack bowls, snack sets, tidbit trays or similar items
P73/471	Re, J. April 23, 1973	S. Hata Co., Ltd., et al.	66/31631, etc.	Item 772.06 21¢ per lb. plus 17%; 18.9¢ per lb. plus 15%	Item 772.15 17% or 15%	Davar Products, Inc. v. U.S. (C.D. 3880) (items marked "A") New York Merchandise Co., Inc. v. U.S. (C.D. 2895) (items marked "B")	Honolulu Plastic snack bowls, snack sets, tidbit trays or similar items (items marked "A") Plastic salad bowls (items marked "B")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/472	Ford, J. April 23, 1973	Chevron Chemical Co.	69/41333	Item 429.52 9%	Item 475.65 0.25¢ per gal.	Judgment on the pleadings	New Orleans "Propylene Pentamer in bulk" (a mixture of hydrocarbons)
P73/473	Ford J. April 23, 1973	Hollywood Accessories	70/62966	Item 646.92 12%	Item 692.27 5.5%	Kami Enterprises, Inc. v. U.S. (C.D. 4352) Judgment on the pleadings	Los Angeles Wheel lock lug nuts
P73/474	Rao, J. April 25, 1973	Castelazo & Assoc. Fisher Bearings Mfg. Co.	59/12852	Par. 369(c) 10½%	Par. 353 or 372 8¾%	Castelazo & Associates et al. v. U.S. (C.D. 3761)	Los Angeles Parts of engines of the carburetor type, which are not dedicated to use in automobiles
P73/475	Ford, J. April 25, 1973	Acme Commercial Company et al.	63/4764, etc.	Par. 397 19% and 17%	Par. 339 12½% and 11%	Ignaz Strauss & Company, Inc. v. U.S. (C.A.D. 923)	San Francisco Brass candlesticks or candelabras
P73/476	Ford, J. April 25, 1973	W. J. Byrnes & Co. et al.	63/19898, etc.	Par. 353 15% (items marked "B") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 13¾%, 12½% and 11½% (items marked "B") Par. 353 12½% (items marked "C")	Midland International Corp. v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	San Francisco Earphones (not subminiature) (items marked "B" Cases imported with radios (entireties) (items marked "C")

P73/477	Ford, J. April 25, 1973	Dejur Amsco Corporation	67/21973	Item 684.70 15%	Item 685.40 11.5%	Agreed statement of facts	New York Articles solely or chiefly used as parts of dictation recording machines
P73/478	Ford, J. April 25, 1973	Hoyt, Shepston & Sclaroni et al.	63/19198, etc.	Par. 353 15% (items marked "B") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 13¾%, 12½% and 11⅝% (items marked "B") Par. 353 12½% (items marked "C")	Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3068) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	San Francisco Earphones (not subminiature) (items marked "B") Cases imported with radios (entireties) (Items marked "C")
P73/479	Watson, J. April 25, 1973	Andrew Fisher Cycle Co., Inc.	72-8-01680	Item 711.93 38%	Item 642.20 13%	Oxford International Corp. v. U.S. (C.D. 4326)	New York Cables in c.v. of wire
P73/480	Watson, J. April 25, 1973	United Mineral & Chemical Corp.	66/35098, etc.	Item 790.55 20%	Item 770.40 12.5%	United Mineral & Chemical Corp. v. U.S. (C.D. 3946)	New York "Tesamoll"

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/127	Maletz, J. April 23, 1973	Greb Industries, Ltd., et al.	R67/14801, etc.	Export value: Invoice values	Not stated	Greb Industries, Ltd. v. U.S. (R.D. 11691)	Buffalo-Niagara Falls Ice skating equipment, ice skates, etc.
R73/128	Re, J. April 24, 1973	Del Valle, Kahman & Co.	R60/5001, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R73/129	Re, J. April 24, 1973	Getz Bros. & Co. et al.	R58/24940, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/130	Re, J. April 24, 1973	Hunter Trading Corp.	R64/12502, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R73/131	Re, J. April 24, 1973	The Nissho American Corp. et al.	R61/23052, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood

R73/132	Re, J. April 24, 1973	Pan Pacific Overseas Corp.	R59/741, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R73/133	Re, J. April 24, 1973	Toyomenka, Inc., et al.	R61/17436, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R73/134	Re, J. April 25, 1973	Balfour, Guthrie & Co., Ltd., et al.	R58/10548, etc.	Export: value Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/135	Re, J. April 25, 1973	Balfour, Guthrie & Co., Ltd., et al.	R59/5312, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/136	Re, J. April 25, 1973	Geo. S. Bush & Co., Inc.	R58/30958, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/137	Re, J. April 25, 1973	Geo. S. Bush & Co., Inc., et al.	R60/15099, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/138	Re, J. April 25, 1973	W. R. Grace & Co. et al.	R60/21575, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R73/139	Re, J. April 25, 1973	Ray Hill Lumber Co.	R59/18829, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

Decisions of the United States Customs Court

Abstracts

Abstracted Valuation Decisions on Remand from Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V73/4	Watson, J. April 23, 1973	Wayne Withrow Tubular Structures Corp. of America	65/19549 (C.D. 4107)	Export value	Crane: U.S. $15,005.05 Electric motors: U.S. $271.33, $406.99, and $3798.63	Agreed statement of facts	Los Angeles A crane and three electric motors
V73/5	Newman, J. April 23, 1973	Hancock Gross Mfg. Co.	64/12280 (C.D. 3459)	Export value	Strainer-stopper: 28.2% of appraised value Base: 71.8% of appraised value	Agreed statement of facts	Philadelphia Duo-strainers: Separate strainer-stopper portion and separate base or holder portion

Judgment of the United States Customs Court in Appealed Case

APRIL 26, 1973

APPEAL 5461.—United Purveyors, Inc. *v.* United States.—CANTALOUPES—MELONS, OTHER—TSUS—INCORPORATION OF RECORD DISREGARDED.—C.D. 4139 reversed December 29, 1972. C.A.D. 1081

Appeal to United States Court of Customs and Patent Appeals

APPEAL 5536.—United States *v.* John V. Carr & Sons, Inc.—CONTROL BOARDS AND PROTECTIVE CIRCUIT BOARDS—ARTICLES USED IN ELECTRICAL POWER CIRCUITS—PARTS OF FORK-LIFT TRUCKS—TSUS.

In this case merchandise ("Control Board" and "Protective Circuit Board") assessed at 14 percent ad valorem under the provision in item 685.90, Tariff Schedules of the United States, as modified, for apparatus used in electrical power circuits was held properly dutiable as claimed at 7.5 percent under the provision in item 692.40, as modified, for parts of fork-lift trucks. It is claimed that the Customs Court erred in finding and holding that the imported merchandise was properly classifiable under item 692.40, *supra;* in finding and holding that the imported articles were not within the ambit of item 685.90, *supra;* and in not finding and holding that the imported articles were unrelated to power circuits. Appeal from C.D. 4411.

Decision on Application for Rehearing Before the United States Court of Customs and Patent Appeals

APRIL 19, 1973

APPEAL 5439.—United States *v.* C. J. Tower & Sons of Buffalo, Inc.—AUTOMOBILES WITH OPTIONAL EQUIPMENT, REAPPRAISEMENT OF.—A.R.D. 277 modified and remanded December 29, 1972. C.A.D. 1079. Application for rehearing filed by appellant on March 7, 1973 denied and C.A.D. 1079 modified.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *May 10, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[AA1921–119]

STAINLESS STEEL WIRE RODS FROM FRANCE

Notice of investigation and hearing

Having received advice from the Treasury Department on April 24, 1973, that stainless steel wire rods from France are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on April 26, 1973 instituted investigation No. AA1921–119 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10 a.m., E.D.S.T., on Tuesday, June 12, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, June 7, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 26, 1973.

[TEA-W-196]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Buffalo, New York, plant of the General Electric Company, New York, New York, the United States Tariff Commission, on April 26, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with transistors and diodes (of the type provided for in item 687.60 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register*.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued April 26, 1973.

[TEA-W-197]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Koss Shoe Company, Inc., Auburn, Maine, the United States Tariff Commission, on May 2, 1973, instituted an investigation under section

301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for men (of the types provided for in items 700.25, 700.26, 700.27, 700.29, 70035, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register*.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 2, 1973.

Index

Bureau of Customs

Court of Customs and Patent Appeals

Customs Court

Tariff Commission Notices

GO

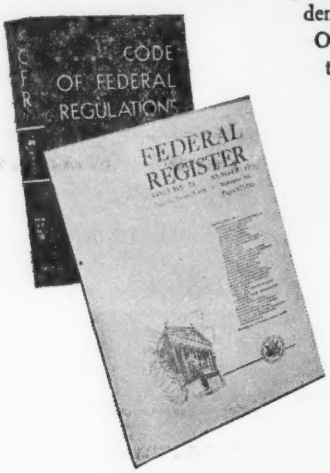
PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE

U.S.MAIL

The FEDERAL REGISTER . . .



publishes daily the full text of Presidential Proclamations, Executive Orders, and Reorganization Plans, together with Federal agency rules, regulations, notices, or similar documents having general applicability and legal effect.

The **FEDERAL REGISTER** is keyed to, and is a daily supplement to the *CODE OF FEDERAL REGULATIONS*. Sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the **FEDERAL REGISTER** is priced at $25 a year; $2.50 a month.

The CODE OF FEDERAL REGULATIONS is a *codification* of rules and regulations issued by the administrative agencies of the Federal Government. Regulatory material published in the *Federal Register* is keyed to the *Code of Federal Regulations* which is published under 50 titles, pursuant to section 11 of the Federal Register Act, as amended.

For SAMPLE COPY of the FEDERAL REGISTER, write to:

Director, Office of the Federal Register,
National Archives and Records Service,
Washington, D.C. 20408

U.S. GOVERNMENT PRINTING OFFICE: 1973